April 1, 1870
Constock appellee 11.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~274~~ 162

THE PROPELLER PORTSMOUTH, FRANK. WILLIAMS CLAIMANT, APPELLANT,

vs.

THE SALT COMPANY OF ONONDAGA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 14, 1868.

March 2 1870
Affirmed
Jun Swayne

SUPREME COURT OF THE UNITED STATES.

No. 374.

THE PROPELLER PORTSMOUTH, FRANK WILLIAMS CLAIMANT, APPELLANT,

VS.

THE SALT COMPANY OF ONONDAGA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Transcript of record from district court	3	1
Libel	4	1
Libellants' stipulation for costs	8	3
Monition	10	4
Bond for release	12	5
Claimant's stipulation for costs	14	6
Claim and answer	16	7
General average statement	22	9
LIBELLANTS' PROOFS.		
Deposition of Joseph Burling	23	11
Deposition of Bezelus O'Hara	26	13
Deposition of Thaddeus Winter	35	17
Deposition of Henry M. Boardman	39	19
Bill of lading	40½	19
RESPONDENTS' PROOFS.		
Deposition of Truman W. Steele	41	20
Deposition of George Hendrey	69	32
Deposition of Charles B. Sill	88	39
Deposition of William Fitzpatrick	97	43
Deposition of Henry Joray	120	52

	Original.	Print.
Deposition of David D. Parmalee	127	55
Deposition of Melancthon H. Wright	136	59
Order setting cause for hearing	139	60
Decree of court	139	61
Appeal bond	141	61
Certificate of clerk	143	62
Cause set for hearing	144	62
Decree	145	62
Appeal bond	147	63

Messrs. Waite and Clark, proctors for libellants.

Messrs. Rae and Mitchell, proctors for respondents.

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-room in the city of Chicago, in the district aforesaid, before the Hon. David Davis, one of the justices of the Supreme Court of the United States, presiding, and the Hon. Thomas Drummond, judge of the district court of the United States for said district, associate, judges of said circuit court, on Thursday, the twenty-second day of October, in the October term of said court, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the eighty-third year.

WM. H. BRADLEY, *Clerk.*

THE SALT COMPANY OF ONONDAGA
vs.
THE STEAM-PROPELLER PORTSMOUTH, &c. } In admiralty.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

2 Be it remembered, that on the fifteenth day of August, in the year of our Lord one thousand eight hundred and sixty-eight, came Frank Williams, claimant of the propeller Portsmouth, and filed in the office of the clerk of the circuit court of the United States for said district his transcript of a record from the district court of the United States for the northern district of Illinois. Which said transcript is in the words and figures following, to wit:

3 Pleas in the district court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Honorable Thomas Drummond, judge of said district court, on Monday, the twenty-seventh day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-third year.

WM. H. BRADLEY, *Clerk.*

THE SALT COMPANY OF ONONDAGA
vs.
THE STEAM-PROPELLER PORTSMOUTH, &c. } 2,175.—In admiralty.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the thirty-first day of October, in the year of our Lord one thousand eight hundred and sixty-six, came the Salt Company of Onondaga, libellants, by Messrs. Waite, Towne, and Clarke, their proctors, and filed in the office of the clerk of the district court of the United States for the northern district of Illinois, at Chicago, in said district, their libel against the steam-propeller Portsmouth, respondent, and also at the same time filed their stipulation for costs in said entitled cause. Which said libel and stipulation are respectively in the words and figures following, to wit:

4 *Libel.*

THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The Salt Company of Onondaga, a company incorporated under the laws of the State of Illinois, exhibit this their libel against the propeller Portsmouth, of whom Truman W. Steele is or lately was master, her engine and machinery, boats, tackle, apparel, and furniture, and against

all persons intervening for their interest therein, in a cause of contract, civil and maratime. And thereupon the said libellant doth allege and articulately propound as follows, to wit:

First. That the said propeller Portsmouth, now lying at the port of Chicago, in the district aforesaid, is a vessel of about tons burthen, and of more than twenty tons burthen; and, at the time when the cause of action hereinafter stated occured, was enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation between ports and places in differant States and Territories of the United States, upon the lakes and navigable waters connecting the same.

Second. That some time in the month of October, and about the 4th day of said month, in the year of our Lord 1866, said propeller, then lying in the port of Buffalo, bound on a voyage to Chicago, the libellants, by C. F. Lovering, as agent and forwarder, shipped on board said propeller 1,000 barrels of fine salt, and 1,000 barrels gro. solar salt, to be car-
5 ried and transported from thence to the port of Chicago,ande there to be safely delivered to C. Comstock, ag't—said Comstock then and there and now being their agent at Chicago, [dangers of navigation alone excepted,]—upon the payment of 33 cents per barrel freight; and the master of said propeller received said salt on board, and gave a bill of lading for the same; and which bill of lading, or a duplicate of the same, they are ready to produce when required. That these libellants at the time said salt was shipped were the owners of the same; and the said C. Comstock, ag't, to whom said salt was to be delivered at Chicago, was their agent. That said propeller has duly arrived at the port of Chicago; and these libellants, by their agent, have been ready and willing to receive said salt and pay the freight upon the same, according to the contract of affreightment; but the said propeller has not delivered all of the same. That they have neglected and failed to deliver 180 barrels of the fine salt, and 844 barrels of the gro. solar salt, and have delivered 926 barrels in a damaged condition. That the salt which they have failed to deliver was and is worth $2 50 a barrel—

Making the sum of	$2,560 00
That the damages onthe 926 barrels will average 25 cents per barrel—making	231 50
	$2,791 50

Making the total amount of the loss or damage to be twenty-
6 seven hundred and ninety-one dollars and fifty cents, for which these libellants have suffered damage by reason of the non-delivery of said salt and the damage done to the same.

Third. That they are informed and believe and so charge that said salt was not lost by the dangers of navigation, but by the careless and negligent conduct of said propeller and those in charge of her; that said master of said propeller gives out and pretends that they threw over a part of salt to save said propeller, and that it is a case of general average; but they are informed it is not a case of general average, and if it is, that said propeller is bound to pay her share of the same, which she has not done, and that they have a lien on her for the same; that said propeller is about to depart from the port of Chicago, and will not return here again this season, and has made no provision to pay to your libellant her share of the general average, if it is a case of general average, which they deny it to be; that said propeller is about to de-

part from the port of Chicago without paying said damages, if she is liable for the whole, or the share which she and the rest of the cargo will have to pay if it is a case of general average, or in any manner securing the same, and they will lose their remedy unless by proceeding against said propeller, her engine, tackle, apparel, and furniture.

Fourth. That they have suffered damage in the amount of
7 twenty-seven hundred and ninety-one dollars and fifty cents, for which they claim reperation in said suit.

Sixth. That all and singular the premises are true as they are informed and believe and so charge, and within the admiralty and maratime jurisdiction of the United States and of this honorable Court. Wherefore these libellants pray process in due form of law, according to the course of this court in cases of admiralty and maratime jurisdiction, may issue against said propeller, her tackle, engine, apparel, and furniture; and that ail persons intervening may be cited to appear and answer all and singular the above, the matters aforesaid; and that this honorable court may decree the payment of the damages aforesaid with costs, and said vessel may be condemned and sold to pay the same; and that the libellants may have such other and further relief as may be equitable and just, and according to the course of the maratime law.

SALT COMPANY OF ONONDAGA,
Per C. COMSTOCK, *Agt.*

WAITE, TOWNE & CLARKE,
Proctors for Libellant.

8 THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

C. Comstock, being duly sworn, says: That he is the agent of the Salt Company of Onondaga, and that he has heard the above libel read, and he believes the same to be true.

C. COMSTOCK.

Subscribed and sworn to before me this 31st day of October, A. D., 1866.

EDWARD P. TOWNE,
Notary Public.

Endorsed: Filed Oct. 31st, 1866.

WM. H. BRADLEY, *Clk.*

Libellant's stip. for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

District court, November term, A. D. 1866.

Whereas a libel was filed in this court on the 31st day of October, A. D. 1866, by the Salt Company of Onondaga against the propeller Portsmouth, boats, tackles, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of the libellant, and the said libellant and C. Comstock, surety, the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the libellant or its surety, execution may issue against their goods,
9 chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and

are bound in the sum of two hundred and fifty dollars, condition that the libellant above named shall pay all such costs as shall be awarded against by this court, or in case of appeal by the appellate court.

Taken and acknowledged this day of , A. D. 186 , before me.

SALT COMPANY OF ONONDAGA,
Per C. COMSTOCK.
C. COMSTOCK.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

C. Comstock, party to the above stipulation, being duly sworn, depose and say that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all his debts and liabilities.

C. COMSTOCK.

Sworn this thirty-first day of October, A. D. 1866 before me.
E. P. TOWNE,
Notary Public.

Endorsed: Filed Oct. 31st, A. D. 1866.
WM. H. BRADLEY, *Clerk.*

Monition.

And thereupon on the same day, to wit, on the thirty-first day
10 of October, A. D. 1866, a monition was issued out of said clerk's office in said entitled cause against the respondent, which said monition and the return of the marshal thereon, also the bond given to the marshal for the release of said respondent, are in the words and figures following, to wit:

Monition.

THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

Whereas a libel hath been filed in the district court of the United States in and for the northern district of Illinois on the 31st day of October, in the year of our Lord one thousand eight hundred and sixty-six, by the Salt Company of Onondaga against the propeller Portsmouth, her engine, boats, tackle, apparel, and furniture, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have any right, title, or interest therein, may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the sum of twenty-seven hundred and ninety-one dollars and fifty cents, ($2,791 50,) the damages alleged in said libel, besides costs of suit: You are therefore commanded to attach the said propeller Portsmouth,
11 her engine, boats, tackle, apparel, and furniture, and to detain the same in your custody until the further order of this court respecting the same; and to give due notice, by publication in some daily newspaper printed in the city of Chicago, for fourteen days previous to the day of trial, and by notice posted up in the most public manner for the

space of fourteen days, at or near the place of trial, of such seizure and libel to all persons claiming the said propeller, her engines, boats, tackle, apparel, and furniture, or knowing or having anything to say why this court should not pronounce against the same, according to the prayer of the said libel; and that they be and appear before the said court to be held in and for the northern district of Illinois, at the United States court-room in the city of Chicago, in said district, on the first Monday in December next, if that be a day of jurisdiction; if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return, together with this writ.

Witness the Honorable Thomas Drummond, judge of the said court, this 31st day of October, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the 91st year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[50-cts. stamp cancelled.]

12 *Marshal's return.* [*Marshal's return.*]

Under and by virtue of the within writ, I took the propeller Portsmouth therein named, her engine, boats, tackle, apparel, and furniture, into my custody on the 31st day of October, A. D. 1866, and released the same from such custody on the 2nd day of November, in the year aforesaid, after the claimant thereof had, on said last-mentioned day, delivered to me the bond duly executed and approved, which is herewith returned into court. By order of the proctors for the within-named libellant, I have not given notice according to the command of said writ. Dated December 3rd, 1866.

J. R. JONES, *U. S. Marshal,*
By A. B. COATS, *Dep'y.*

Endorsed: Filed this 3d day of Dec'b'r, A. D. 1866.
WM. H. BRADLEY, *Clerk.*

Bond for release.

Bond.

Know all men by these presents, that we, Daniel Williams, of the city of Buffalo, in the State of New York, as principal, and William G. Lewis, Charles H. Ham, and Joseph B. Lewis, of Chicago, county of Cook and State of Illinois, as sureties, are held and firmly bound unto the said Salt Company of Onondaga in the penal sum of five thousand five hundred and eighty-three dollars to be paid unto the said The Salt Company of Onondaga; which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at
13 Chicago the first day of November, in the year of our Lord one thousand eight hundred and sixty-six. Whereas in a certain cause of contract, civil and maritime, moved and prosecuted in the district court of the United States of America for the northern district of Illinois, on behalf of the said The Salt Company of Onondaga against the propeller Portsmouth, her engine, boats, tackle, apparel and furniture, a warrent of arrest has been issued out of the said court against the said propeller Portsmouth, her engine, boats, tackle, apparel, and

furniture, in virtue of which said warrant the said propeller Portsmouth, her engine, boats, tackle, apparel, and furniture, have been arrested by Augustas B. Coats, one of the deputies of the marshal of the United States for the said northern district of Illinois, and are now in the custody of the said marshal; now, therefore, the condition of this obligation is such that if the above-bounden Daniel Williams, the claimant of said propeller Portsmouth, her engine, boats, tackle, apparel, and furniture, shall well and truly abide and answer the decree of said court in the aforesaid cause, then this obligation shall be void; otherwise it shall remain in full force and virtue.

DANIEL WILLIAMS. [SEAL.]
WM. G. LEWIS. [SEAL.]
CHARLES H. HAM. [SEAL.]
JOS. B. LEWIS. [SEAL.]

Approved by

WAITE, TOWNE & CLARKE,
Libellant's Proctor.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

being duly sworn, depose and say that he is resident of the northern district of Illinois, and that he own property in said district subject to execution, worth dollars over and above all just debts and liabilities.

14 Sworn to and subscribed before me this day of , A. D., 18 .

Endorsed: Approved.

THOMAS DRUMMOND.

Filed Dec'b'r 3d, 1866.

WM. H. BRADLEY, *Clk.*

Claimant's stip. for costs.

On this day, to wit, the twenty-sixth day of January, A. D. 1867, came the claimant of said propeller by Robert Rae, esq., his proctor, and filed his stipulation for costs; also his claim and answer in said entitled cause; which said stipulation for costs, claim, and answer, are in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

district court, term, A. D. 18 .

Whereas a libel was filed in this court on the 31st day of October, A. D. 1866, by the Salt Company of Onondaga against the propeller Portsmouth, boats, tackle, apparel, and furniture, for the reasons and causes in said libel mentioned; and whereas a claim has been filed in the said cause by Frank Williams, , and the said and Daniel R. Williams, C. Y. Richmond, and T. W. Steele, sureties, the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimant or his sureties, execution may issue against their goods, chattels, and lands, for the sum of two hundred and

15 fifty dollars: Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of two hundred and fifty

dollars, conditioned that the claimant above named shall pay all such costs as shall be awarded against by this court, or in case of appeal by the appellate court.

DANIEL R. WILLIAMS.
C. Y. RICHMOND.
T. W. STEELE.

Taken and acknowledged this 23d day of January, A. D. 1867, before me.

[NOTARIAL SEAL.] CONRAD L. NIEHOFF,
Notary Public.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

C. Y. Richmond, part to the above stipulation, being duly sworn, depose and says that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all his debts and liabilities.

C. Y. RICHMOND.

T. W. STEELE.

Sworn this 23d day of January, A. D. 1867, before me.
R. RAE, *U. S. Com'r.*

[NOTARIAL SEAL.] CONRAD L. NIEHOFF,
Notary Public.

[5-ct. stamp cancelled.]

Endorsed: Filed Jan'y 26th, A. D. 1867.
WM. H. BRADLEY, *Clerk.*

16 *Claim & answer.* [*Claim and answer.*]

To the Honorable Thomas Drummond, judge of the United States district court, northern district of Illinois, in admiralty:

The claim and answer of Frank Williams to the libel of the Salt Company of Onondaga against the propeller Portsmouth, her boats, engines, machinery, &c., in a cause of contract, civil and maratime, alleges as follows:

First. That Frank Williams is the sole and bona-fide owner of said propeller Portsmouth, and that no other person or persons are the owners thereof.

Second. That claimant admits articles one and two of said libel, except the allegations that said propeller delivered nine hundred and twenty-six (926) barrels of said salt in a damaged condition; and also all allegations as to the value of said salt, and the amount of said alleged damage, which allegations, and each and every part thereof, this claimant denies to be true; and wholly denies the truth of so much of said libel as charges that said property was lost through any fault or mischance of the officers and crew of said vessel, or through any fault of said vessel herself; but on the contrary alleges that said property
17 was jettisoned by reason of a peril of the lake, to wit, said vessel getting aground in consequence of a dense fog prevailing at the time, when the master of said propeller was, notwithstanding the greatest skill and care was used by said master and other officers of said propeller, deceived as to the precise locality of said propeller.

That for a full answer to each and every part of said libel, he says

that said vessel started on her voyage on or about the 4th day of October last, from the port of Buffalo, bound thence to the port of Chicago, in the State of Illinois, laden with a general cargo of merchandise, salt, plaster, &c.; that nothing material occurred during the voyage until the morning of the 11th day of October, at 3 o'clock, the vessel, as it afterwards turned out, being near Waukegan, Lake Michigan, with the wind from the north and northeast, and had been so blowing for the period of twenty-six hours; that when off Thunder Bay island, Lake Huron, the weather became thick and foggy, so foggy that objects could not be discerned most of the time at a greater distance than four hundred feet, so that no headland or landmark had been seen since said propeller left Fox island, except towards sunset on the evening of the 10th the officers of said propeller saw a monument or spire, which they took to be situated in Racine, Wisconsin; that about 3 o'clock, aforesaid, the officers of said propeller supposed they were off Chicago and hauled the vessel up and stood west running under a check, and keeping the lead of said vessel going; that at the time the greatest precaution was used, the vessel going under a slow check, the look-outs at
18 their respective posts, the master and officers on deck, and said vessel did not make for said harbor before the officers first had made a careful calculation of her speed and the distance she usually went in a given time under the steam she had been using during the voyage, so that they believed the spire they had seen but for an instant on the night previous was situated in Racine, when in fact it must have been at Milwaukee. And when off Waukegan they did not approach said harbor so near as not to be able to keep out into the lake, until they first saw the light of the lighthouse, which is nearly like the light of the lighthouse at Chicago, and before seeing said light, heard the locomotives on shore ringing their bells and blowing their whistles as they moved backwards and forward near said harbor, just as they are heard off Chicago harbor by persons on board of vessels approaching the harbor; said propeller was headed for said light, and when she got near the pier said master discovered it was not Chicago, when said vessel was immediately stopped and backed, but being loaded her headway was such that she would not stop until she struck the bottom parellel with the pier and about fifty feet off said pier. That every effort was made to get said propeller off without jettisoning any of her cargo, but all efforts proving futile, said master was compelled to relieve said vessel, cargo, and freight from imminent peril, common to all, to throw overboard the merchandise mentioned in said libel, together with other parts of her cargo, more particularly set forth in the general
19 average, a copy whereof is hereto annexed.

Third. That said libellant refused to trial said loss as a voluntary sacrifice made to secure safety of propeller, cargo, and freight from a common peril, and refused in any manner to be parties to any general average adjustment which might be made in reference to the same; but claims, and still continue to claim, that said loss is particular average, chargable alone to said propeller, by reason of the negligence claimed in said libel; yet notwithstanding said disclaimer, respondent caused a general average statement to be made out by Samuel F. Atwater, a skillful and competent adjuster of average losses, of said loss, and there appears by said adjustment to be due said libellant from said vessel the sum of eight hundred and forty-two and $\frac{59}{100}$ dollars, which has never been demanded of the respondent as a general average indebtedness, but which respondent admits to be equitably due, all of which will more fully appear by a copy of said adjustment hereunto annexed, and which

sum together with the sum of three hundred and seventy-eight and $\frac{41}{100}$ dollars, due said libellant from the owners of the other portions of the cargo aforesaid, as a general average indebtedeess, and the sum of fifty-five dollars for his costs in and about this suit expended, this respondent tendered to the consignee and agent of the said libellant, C. Comstock, of the city of Chicago, to wit, on the 23d day of January, A. D.
20 1867, which said sums so tendered as aforesaid were refused; and the respondent says he has always been willing and ready since the loss aforesaid to pay the said libellant what was equitably due it from the propeller, on general average, and also the costs as aforesaid.

Fourth. And this respondent further says that this court ought not to have further cognizance of said libel, as to the matters set forth therein, because he says that there is a complete separation between the cargo and the vessel; that the balance of the said cargo of salt as aforesaid belonging to the said libellant on the said propeller, to wit, nine hundred and twenty-six barrels of salt, has been delivered to the agent and consignee of the said libellant, C. Comstock, of the city of Chicago, and that a general average bond has been executed and delivered by the said agent and consignee of the said libellant, as by law in such case made and provided, and therefore that the cargo is no longer bound to the ship and the ship is no longer bound to the cargo. And the respondent says the lien being gone as aforesaid that this court has no jurisdiction of the matters in controversy, the same not being properly cognizable in an admiralty court, but in the courts of common law.

Fifth. That all and singular the premises are true. Wherefore the respondent prays that said libel be dismissed with costs, and that this honorable court would be pleased to do as justice may require.

21 FRANK WILLIAMS,
[By DANIEL R. WILLIAMS,
His Agent & Attorney in fact.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Daniel R. Williams, being duly sworn, says that he is the attorney in fact and agent of the respondent, Frank Williams, who resides at the city of Buffalo, in the State of New York; that he has read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

DANIEL R. WILLIAMS.

Sworn and subscribed to this 23d day of January, A. D. 1867, before me.

[NOTARIAL SEAL.] CONRAD L. NIEHOFF,
Notary Public.

[5-ct. stamp cancelled.]

22 *General average statement.—General average statement propeller Portsmouth, cargo, & freight.*

This propeller sailed from Buffalo on the 4th October, bound for Chicago, laden with merchandise, salt, plaster, cement, marble dust, &c. During a dense fog on the 11th mistook Waukegan for Chicago, and attempted to run into port at 3 a. m., and on discovering the mistake backed engine, but the heavy wind and sea drove vessel on to the bottom about fifty feet from and parallel with the pier, and south of it; used all means in our power to get off; parted many lines; sent to Chicago for tug and assistance, and was obliged to throw overboard part of cargo to get off at 5.30 a. m., of 12th; arrived at Chicago on the 12th.

22½ *Propeller Portsmouth.—Sacrifices & expenses.*

C. Comstock, ag't	For loss by jettison of—		
	189 bbls. fine salt, 2 40	432 00	
	844 " g. solar "	2,025 60	
		2,457 60	
	Less lake fr't	337 92	
			2,119 68
A. A. Sample	For loss by jettison of 2 p'k'g's fish	$13 00	
	Less lake fr't	50	
			12 50
Neely Windiate	For loss by jettison of—		
	300 bbls. marble dust, 4¾	1,312 50	
	250 " plaster	1,144 25	
	425 " cement, $2 90	1,232 50	
		3,689 25	
	Less lake fr't	320 00	
			3,369 25
Lewis Ham & Co	For loss by jettison of 2 box's glass	12 00	
	Breakage by forcible discharge	23 60	
			35 60
Tug Geo. W. Woods	For services to wreck with pump		393 50
W. H. Wright	For hawser used up getting off		44 85
Hale & Co	For procuring invoices for average		50 00
Owners of vessel	For extra labor getting off	40 00	
	" telegraphing	6 00	
	" expenses of clerk to Chicago for assistance	25 00	
	" damage & lines, as per estimate of C. J. Magill	194 48	
	" wages & provisions of master & crew getting off	85 75	
	Paid Doolittle & Olcott for repairs for damage in getting off	69 86	
			421 09
Freight list	For loss by jettison on freight		658 42
C. J. Magill	For saving, & report on hawser & lines		10 00
S. T. Atwater	For protest, bond, adjustment, & copies		75 00
	General average		7,189 89

Propeller Portsmouth.

Contributing.	Interest.	Contributing.	Contributions.	Receives.	Dr. bal.	Cr. bal.
Prop. Portsmouth		20,000 00	4,341 45	421 09	3,920 36	
Freight list	Gross insured, 1,174 34	587 17	127 47	658 42		530 95
Cargo.						
Salt Co. of Onondaga, C. Comstock, ag't	2,000 bbls. salt. 976 del'd. 1,024 contributed for. 2,000 C., 2 40, 4,800					
	Less freight 660	4,140 00	898 68	2,119 68		1,221 00
Neely & Windiate	Invoice marble dust	3,369 25	731 37	3,369 25		2,637 88
Lewis Ham & Co	" glass	2,356 75	511 58	35 60	475 98	
Magill & Latham	" coal	12 00	2 60	10 00		7 40
A. A. Sample	" fish	398 00	86 39	12 50	73 89	
L. Barber & Son	" "	824 63	179 00		179 00	
Smith Bros	" merchandise	86 90	18 86		18 86	
Bennett & Gregory	" "	86 90	18 86		18 86	
Hitchcock & Endicott	" "	489 55	106 27		106 27	
C. J. L. Meyer	" "	659 16	143 09		143 09	
E. A. Kimball	" "	96 79	21 01		21 01	
Prickett & Drysdale	" "	15 00	3 26		3 26	
Tug G. W. Wood				393 50		393 50
W. H. Wright				44 85		44 85
Hale & Co				50 00		50 00
S. T. Atwater				75 00		75 00
	Am't forward	33,122 10	7,189 89	7,189 89	4,960 58	4,960 58

Propeller Portsmouth.

Contributing interest.	Contributing.	Contributions.	Receives.	Dr. Bal.	Cr. Bal.
Amounts forward	33, 122 10	7, 189 89	7, 189 89	4, 960 58	4, 960 58
Contributing	33, 122 10				
Contributions		7, 189 89			
Receives			7, 189 89		
Dr. balance				4, 960 58	
Cr. balance					4, 960 58

Average, 21.70726.

SAM. T. ATWATER, *Adjuster.*

23 Endorsed: Filed January 26th, 1867.
WM. H. BRADLEY, *Clerk.*

Libellant's proof.

Depositions taken before Francis E. Clarke, a notary public at Waukegan, Illinois, in said district, on the 17th day of June, A. D. 1868, on the part of the libellant.

Deposition of Joseph Burling.

Joseph Burling, a witness of lawful age, being produced, sworn, and examined on the part of the libellant to the questions propounded to him, deposes and says as follows, to wit:

Interrogatory 1st. What is your name, age, residence, and occupation?

Answer. My name is Joseph Burling; my age is fifty years; my residence is Waukegan, Illinois; and I am at present engaged in merchandizing.

Interrogatory 2d. How long have you lived in Waukegan?

Answer. Sixteen years.

Interrogatory 3d. Do you consider yourself acquainted with the coast immediately adjacent to Waukegan, Illinois?

Answer. No. I am a landsman and not capable of judging only as I have observed it from the land; I am not acquainted with the depth of the water.

Interrogatory 4th. Do you remember the time when the propeller Portsmouth run ashore at Waukegan?

Answer. I don't remember of only one propeller that ever came ashore at Waukegan, and I do not remember the name of that; I
24 don't remember the exact time when that came ashore, but I judge it was about a year and a half ago.

Interrogatory 5th. Please state what means, if any, were employed to save the freight belonging to said propeller.

Answer. I do not know that any means were adopted for that purpose.

Interrogatory 6th. Were you present at any time when the propeller was ashore?

Answer. I saw her from the bluff.

Interrogatory 7th. State if, in your opinion, any plan could have been devised by which the cargo of the propeller could have been transferred to the wharf or shore.

(Objected to.)

Answer. I am hardly competent to answer that question, being a landsman. She was not so far off but what I think timbers could have been got to her from the pier.

Interrogatory 8th. What was the condition of the weather during the day the propeller was ashore—as regards the lake—whether the lake was rough or smooth?

Answer. There was a good heavy swell on the lake.

Interrogatory 9th. In your opinion, would it have been possible to have constructed a raft to have removed the cargo from the vessel to the shore?

(Objected to.)

Answer. I think it would.

Interrogatory 10th. In what direction is the lighthouse from the end of the pier?

Answer. I think southwest.

25 Interrogatory 11th. About what distance is it from the pier?

Answer. I could not say.

Interrogatory 12th. Which is the nearest to the pier, the lighthouse or the railroad track?

Answer. The railroad track.

Interrogatory 13th. About how high is the lighthouse above the level of the lake?

Answer. To give a rough guess, I should say about sixty feet.

Interrogatory 14th. Did the weather allow and was there time during the day to have constructed a raft for the removing of the cargo?

(Objected to.)

Answer. I think there was.

Cross-examination by Mr. Mitchell:

Interrogatory 1st. What time of day or night was it that you saw this propeller ashore that you have stated you saw ashore in your direct examination?

Answer. It was in the day-time, but I cannot tell what time of day.

Interrogatory 2d. Was it in the forenoon or afternoon?

Answer. I think in the forenoon.

Interrogatory 3d. Can you tell when the propeller went ashore?

Answer. I cannot; I only know that she was ashore.

Interrogatory 4th. How long after you saw her was it that she got off?

Answer. I could not say.

26 Interrogatory 5th. How far was the propeller from the pier and how far from the shore?

Answer. I could not say.

Interrogatory 6th. Did you ever construct a raft for the purpose of taking a cargo off from a vessel, and assist in taking off such cargo?

Answer. No.

Direct examination resumed:

Interrogatory 15th. Do you know whether the propeller was ashore during the whole of the day that you saw her?

Answer. I could not say.

JOSEPH BURLING.

Taken, subscribed, and sworn to before me, at my office in Waukegan, this 17th day of June, A. D. 1868.

[NOTARIAL SEAL.] FRANCIS E. CLARKE,
Notary Public.

Deposition of Bezelus O'Hara.

And Berzelus O'Hara, a witness of lawful age, being produced, sworn, and examined on the part of the libellant to the questions propounded to him, deposes and says as follows, to wit:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Answer. My name is Berzelus O'Hara; my age is forty-five; my occupation is fishing in the lake; and my residence is Waukegan, Illinois.

Interrogatory 2d. How long have you been a fisherman in Lake Michigan?

27 Answer. The most of the time for thirteen years.

Interrogatory 3d. How does the shore shoal off from Waukegan—gradually or rapidly?

Answer. Gradually.

Interrogatory 4th. What is the character of the bottom off from the pier—sand, gravel, or mud?

Answer. I judge it to be sand.

Interrogatory 5th. Do you remember the circumstance of a propeller running ashore sometime during the fall of 1866?

Answer. I do.

Interrogatory 6th. Were you present at the pier when the propeller was ashore?

Answer. I was.

Interrogatory 7th. What means, if any, were employed to save the freight of the propeller?

Answer. I don't know what the captain done.

Interrogatory 8th. What means, in your opinion, could have been used to remove the cargo of the propeller to the shore?

(Ojected to.)

Answer. I think there could have been three small boats used which were here; I think there could have been a lighter brought here from Chicago to put the freight on shore.

Interrogatory 9th. How or in what manner could those boats have been used?

Answer. They could have been lashed together and some boards put on to them, and the freight could have been put on to them, and transferred to the shore or pier.

28 Interrogatory 10th. How many trips could the boats in an hour, if properly manned, make from the vessel to the pier or to the shore?

Answer. I think three trips.

Interrogatory 11th. How many barrels of salt could each boat have carried in a single trip from the propeller to the shore?

Answer. One could have carried eight barrels and the others four apiece.

Interrogatory 12th. Do you know whether any part of the cargo was saved by any of the citizens of Waukegan?

Answer. I don't know as I can say there was; but I believe there was.

Interrogatory 13th. Did you see any barrels along the shore adjacent to where the propeller was aground which you supposed had been transferred from the propeller to the shore by the small boats spoken of?

(Objected to.)

Answer. I think I saw some which had transferred there by one or two of the boats.

Interrogatory 14th. Do you think that the cargo or any portion of it could have been saved?

(Objected to.)

Answer. If the cargo had been mine I should have saved a portion of it or all of it.

Interrogatory 15th. Did you notice any attempt to save the cargo?

Answer. I saw two or three there with a small boat trying to save some barrels, as I supposed.

Interrogatory 16th. Did you observe any attempts by the officers or the crew of the propeller to save the cargo?

29 Answer. I did not.

Cross-examination by Mr. Mitchell:

Interrogatory 1st. When did you first see this propeller?

Answer. About one o'clock in the day.

Interrogatory 2d. Do you know what time in the day she went aground?

Answer. I don't know—I was not there.

Interrogatory 3d. Was there any, and, if so, what kind of a swell on the lake at the time?

Answer. There was a swell, but not running very high.

Interrogatory 4th. Do you know whether that swell increased or decreased during the day?

Answer. I think that the sea did not vary much during the day if I recollect right.

Interrogatory 5th. Have you ever been seaman on the lakes?

Answer. No more than to follow fishing with gill nets and boats.

Interrogatory 6th. Were you out fishing on this day?

Answer. No, sir; I was not.

Interrogatory 7th. Did you ever lash together boats in the manner you have described, and take off a cargo from a vessel aground in such a swell?

Answer. No, sir.

Interrogatory 8th. Did you ever lash together boats in the manner you have described, and take off a cargo from a vessel aground?

Answer. I never did.

30 Interrogatory 9th. Do you know how much of a cargo or what kind of a cargo the propeller Portsmouth had on when she was aground here at the time you have stated?

Answer. I don't know.

Interrogatory 10th. Did you notice how much above the pier the propeller lifted when raised by the swell? I mean the stern of the boat.

Answer. When I saw her I think she did not raise and fall any; that is the way I understand it, both bow and stern were hard on.

Interrogatory 11th. Was she not rolling badly on account of the swell?

Answer. I don't think she was.

Interrogatory 12th. Was she rolling any?

Answer. I don't recollect noticing whether she was rolling or not.

Interrogatory 13th. How long were you there?

Answer. I don't know as I could tell how long; I was there probably an hour, though perhaps not half as long; I was there some two or three different times during the afternoon, half an hour or an hour each time.

Interrogatory 14th. You say that one of these boats would carry eight barrels and the other two four apiece. Could you put on, when lashed together, sixteen barrels?

Answer. I think I could and carry them with ease.

Interrogatory 15th. How much water would these boats draw when so loaded?

Answer. I think that one of them would draw sixteen or eighteen inches; the other two would draw about a foot.

31 Interrogatory 16th. How would you have propelled the boats so lashed together and covered with plank?

Answer. I would have run a line from the propeller to the pier or to the shore and hauled them in by hand.

Interrogatory 17th. How high would the gangway of the propeller have been above the deck of the boats so lashed together?

Answer. I don't know.

Interrogatory 18th. Did you ever have any experience in lightering a vessel?

Answer. I don't hardly know how to answer that question. I have taken salt off from a vessel on to boats.

Interrogatory 19th. How much did you ever take off?

Answer. I don't recollect just how much—a number of barrels.

Interrogatory 20th. About how many?

Answer. At one time I recollect taking off some two or three loads.

Interrogatory 21st. How much did you take at a load?

Answer. I don't know.

Interrogatory 22nd. About how many?

Answer. Some five or six barrels, I should judge.

Interrogatory 23d. You say you saw two or three with small boats attempting to save some barrels from the boat; did they go to the propeller?

Answer. They went pretty close to her.

Interrogatory 24th. Do you know whether they saved any?

Answer. I don't.

Interrogatory 25th. Why did they not save any?

Answer. I could not tell.

32 Interrogatory 26th. Now, was it not difficult for a boat to approach the propeller at that time, and was not that the reason that the small boats attempting to save some barrels or take some off of the propeller did not do so?

Answer. It might have been partially difficult for the boats to approach the propeller. I don't know anything about the reasons.

Interrogatory 27th. You say that these three boats lashed together could make about three trips an hour and cary about sixteen barrels a trip?

Answer. Yes.

Interrogatory 28th. You say you have no experience in lightering a cargo. Now, can you tell how long it would take to transfer sixteen barrels from such a propeller to small boats at this time and with this swell?

Answer. I can tell nothing more than I should judge with a proper fixing and with proper help, they could be loaded in five minutes. I think I could do it with proper help.

Interrogatory 29th. Now, if the propeller was rolling at this time and the gangway was full six feet above the small boats, it would have been rather difficult, would it not, to have loaded the boats at all?

(Objected to because it is irrelevant.)

Answer. If she was rolling too bad they could not been loaded.

Interrogatory 30th. You say you thought that some barrels were transferred from the propeller to the shore. How many?

Answer. I did not count them; I should judge twenty-five or thirty.

33 Interrogatory 31st. Why were not more transferred if it was not difficult?

Answer. I don't know.

Interrogatory 32nd. What time of the day was it that you saw such attempts to take barrels from the propeller?

Answer. Along towards evening.

Direct-examination resumed:

Interrogatory 17th. How long did the propeller remain aground after you first saw her?

Answer. I could not tell.

Interrogatory 18th. What time of the day or of the evening was it when you last saw her?

Answer. I think it was in the evening.

Interrogatory 19th. Did the swell prevent the fishing boats from making trips to and from the propeller?

Answer. I don't think it would.

Interrogatory 20th. Did you see any portions of the cargo after it was thrown overboard piled up above the water, and lying along the side of the propeller?

Answer. I did.

Interrogatory 21st. Was there a large or small amount of the same?

Answer. I should call it a large amount.

Interrogatory 22nd. About how large, as near as you can estimate it?

Answer. I don't know how I am to make any estimate on it.

34 Interrogatory 23d. What caused any portion of it to be above the water?

Answer. I calculate that it was because so many barrels thrown over that it piled up in that way.

Interrogatory 24th. What was the appearance of the cargo so thrown out; was it in barrels or loose materiel?

Answer. In barrels.

Interrogatory 25th. What is the largest number of barrels do you think could have been carried upon the three boats so lashed together?

Answer. I think sixteen is the largest number I should want to try.

Cross-examination resumed:

Interrogatory 33d. How long did these barrels that you say you saw above water remain in sight?

Answer. I could not say; they were in sight when I went off the pier the last time.

Interrogatory 34th. Did you look at that time particularly to see whether the propeller was rolling?

Answer. I don't think that I did, for I should have noticed it without looking particularly.

Interrogatory 35th. Then you say that she was not rolling?

Answer. I did not say so; I don't think that she was rolling to hurt anything.

Interrogatory 36th. How near could you get to shore with a boat drawing sixteen inches of water, or with the boats lashed together with sixteen barrels of salt on?

35 Answer. I could have got nigh enough to have placed a sort of a horse that I could have put a plank from the boats to the horse, and from the horse to the shore to have unloaded the boats.

Interrogatory 37th. How long would it have taken you to have unloaded sixteen barrels of salt in that way?

Answer. I think it could have been done in ten minutes after the platform was made.

Interrogatory 38th. Did you ever unload salt that way?

Answer. No; I never did.

Interrogatory 39th. Was there such material to unload a vessel there with at that time?

Answer. I don't know as there was.

Direct examination again resumed:

Interrogatory 26th. How would you have transferred the cargo of the propeller to the fishing boats?

Answer. I should have rigged a fall suitable for hitching on and lowering away.

B. O'HARA.

Taken, subscribed, and sworn to before me at my office in Waukegan this 17th day of June, A. D. 1868.

[NOTARIAL SEAL.] FRANCIS E. CLARKE,
Notary Public.

Deposition of T. Winter.

And Thaddeus Winter, a witness of lawful age, being produced, sworn, and examined on the part of the libellant to the questions propounded to him, deposes and says as follows, to wit:

36 Interrogatory 1st. What is your name, age, occupation, and place of residence?

Answer. My name is Thaddeus Winter; my age is thirty-five years; my occupation is that of lumber merchant; and I reside at Waukegan, Illinois.

Interrogatory 2nd. How long have you resided at Waukegan?

Answer. Five years.

Interrogatory 3d. Do you remember the occasion of a propeller going ashore at Waukegan sometime in the fall of A. D. 1866?

Answer. I do.

Interrogatory 4th. Did you see her ashore?

Answer. I did.

Interrogatory 5th. How long a time did you see her?

Answer. From seven o'clock in the morning till 6 o'clock in the evening of the same day.

Interrogatory 6th. Did you observe whether any means were employed by the officers or the crew of the propeller to save her freight?

Answer. Nothing further than throwing overboard; I stood on the bank; I could see nothing further.

Interrogatory 7th. State if in your opinion any plan could have been divised by which the cargo of the propeller could have been transferred to the wharf or to the shore.

(Objected to.)

Answer. I will state only my opinion; a thousand men being present might have had a thousand different opinions. My opinion is that if I had been them I should have telegraphed to Chicago to have them send lighters and large scows, or anything to light the load.

37 Interrogatory 8th. Do you think it would have been possible to have constructed a raft for the removing of the cargo?

Answer. I think a raft could have been constructed, but it would have taken some time.

Interrogatory 9th. Could the material necessary to the construction of a raft been obtained in Waukegan?

Answer. Yes; I think it could.

Interrogatory 10th. Would the weather have allowed the use of a raft in removing the cargo?

Answer. I think it would by the time they got it built, as the sea went down in the afternoon.

Interrogatory 11th. After the tug had reached Waukegan, could that have been employed in removing the cargo?

Answer. I think it could.

Cross-examination by Mr. Mitchell:

Interrogatory 1st. Did you go down to the propeller while she was aground?

Answer. Yes, sir; on the pier.

Interrogatory 2d. Are you or were you ever a seaman?

Answer. No, sir; but I have sailed on the lakes.

Interrogatory 3d. How much of a swell was there on the lake in the morning?

Answer. There was considerable of a swell in the morning; I could not say whether it was ten feet or two feet high; there was considerable swell.

Interrogatory 4th. Did you ever assist in lightering a vessel with a raft?

38 Answer. Yes, sir; I did a vessel; I never did a propeller.

Interrogatory 5th. Was there any such swell at the time as there was on the lake when the propeller was aground?

Answer. No, sir; not so big.

Interrogatory 6th. Did you ever assist in lightering a vessel with a tug?

Answer. Yes, sir.

Interrogatory 7th. Was that the same vessel?

Answer. Yes, sir.

Interrogatory 8th. Do you know whether the tug could have got alongside of the propeller close enough to have taken her cargo?

Answer. I think she could have got close enough by the time she got here, as the sea had gone down some, to have taken off a part of the cargo at different times.

Interrogatory 9th. Don't you know that the propeller, being embedded in the sand piled on each side, would prevent the tug getting near enough her to unload her?

Answer. No; I do not.

Interrogatory 10th. Do you know how much of the cargo was thrown overboard in the morning?

Answer. I do not.

Interrogatory 11th. What kind of a cargo did you ever assist in lightering, and on what kind of a vessel, and where was it?

Answer. A cargo of lumber, on a sailing vessel, and on Grand river.

39 Interrogatory 12th. What kind of a lighter did you use, if any?

Answer. We took the lumber off the vessel and made a raft.

T. WINTER.

Taken, subscribed, and sworn to before me at my office, in Waukegan, this 17th day of June, A. D. 1868.

[NOTARIAL SEAL] FRANCIS E. CLARKE, *Notary Public.*

Endorsed: Filed June 22, 1868. WM. H. BRADLEY, *Clk.*

Deposition of H. M. Boardman.

Deposition of Henry M. Boardman, taken before David B. Lyman, a notary public, in the city of Chicago, on the 2d day of July, A. D. 1868, on behalf of the libellant.

1 q. What is your name, age, residence, and occupation, and what was your occupation during the year A. D. 1866?

A. My name is Henry M. Boardman. I am of legal age. I reside in Chicago. I am book-keeper for the Salt Company of Onondaga, and have been for the last four years at Chicago, Illinois. I was book-keeper when the salt in question was jettisoned from the propeller Portsmouth.

2 q. State, if you know, whether the propeller Portsmouth had a part of a cargo of salt on board belonging to said Salt Company of Onodaga, at the time of her running on shore as stated in the libel and answer filed in this cause; if so, state how many barrels of salt belonging to said company were thrown overboard or lost from said propeller, stating the value, per barrel, at Chicago, of the salt so lost, and also the freight which would have been due on the same if it had been delivered at Chicago.

A. Yes; she had a part of a cargo on board at that time. Ten hundred and twenty barrels were lost or thrown overboard, and four barrels more were wasted by the propeller in delivery. The value of that salt, per barrel, in Chicago, would, at that time, be two dollars and fifty cents per barrel for the lot. We made sales in that day at $2 65 per barrel. The freight, per barrel, would have been thirty-three cents per barrel according to the bill of lading, if it had been delivered. The salt so thrown overboard was shipped to us as gents by the Salt Company of Onondaga.

Cross-examination waived by Mr. Mitchell.

H. M. BOARDMAN.

Endorsed: Filed July 3, '68.

WM. H. BRADLEY, *Clk.*

40½ The following bill of lading was introduced by the libelant's proctors, to wit:

Bill of lading.

BUFFALO, *Octo. 4th*, 1866. (Duplicate.)

Shipped in good order and well conditioned by C. F. Lovering as agent and forwarder for account, and at the risk of whom it may concern, on board the prop. Portsmouth, whereof is master, the following articles as herein marked and described, to be delivered in like good order and condition as addressed in the margin, or to his or their assigns or consignees upon paying the freight and charges as noted below. (The dangers of lake navigation only excepted.)

In witness whereof, the master of said vessel hath affirmed to two bills of lading of this tenor and date, one of which being accomplished the other to stand void.

Acct. Salt Co. of Onondaga,	1,000 brls. fine salt.
care C. Comstock, agt.,	1,000 " gro. solar.
Chicago, Ill.	$660.

Lake frt. 33 c. pr. brl.

T. W. STEELE, *Master.*

Respondent's depositions.

The deposition of Truman W. Steele, taken before John C. Reily, a notary public, in the city of Chicago, on the 16th day of February, A. D. 1867, on behalf of the respondent.

41

Truman W. Steele, a witness produced on behalf of the respondents, called and having been by me first duly examined, cautioned, and solemnly sworn on his oath, deposeth and saith as follows:

Int. 1st. What is your name, age, and occupation, and where do you now reside?

Ans. My name is Truman W. Steele. I am forty-five years of age—past. I reside in Chicago. I have been sailing for the last twenty-four years; for the last sixteen years I have been on propellers; have been master of propellers for the last fourteen or fifteen years.

Int. 2nd. In what capacity and on board of what propeller was you in the month of October, eighteen sixty-six?

Ans. I was master of the propeller Portsmouth.

3. State where, on the third day of October or thereabouts of that year, the propeller then was.

Ans. I think she was in Buffalo unloading.

4. About what time did she start for the city of Chicago; what kind of a cargo did she carry; and state if anything material occurred during the voyage; and, if so, what was it?

Ans. I think it was on the evening of the fourth of October, somewhere in the evening; I don't recollect what the hour was. She had two thousand barrels of salt; I think something about a thousand barrels of water-lime and marble dust; the balance of the cargo was something like seventy tons of merchandise, glass, &c. There was

42

nothing material occurred—nothing more than usual up to the time the night we got ashore; after we got on to Lake Huron it was foggy all the way up. I did not make any stop till I got to the head of Beaver island. I stopped there and wooded—took on some wood; then I stopped again at Fox island, took on some more wood; landed fifty barrels of salt; took on about two hundred packages of fish. I left there, I think, about seven o'clock in the evening, bound straight through for Chicago; after leaving Fox island it was blowing then a light breeze from the northeast; the wind increased, so that at twelve o'clock at night it was blowing nearly a gale of wind, and it was very foggy all the time. I never saw so much fog and so much wind in all my experience in all my life as there was then. We was carrying our foresail all the time up till that evening before we went ashore; sometime along in the evening we took in our foresail. I made up my mind, and made my calculations to be at Racine at six o'clock in the evening. I consulted with my engineer; I consulted with him and made my calculations that we would be about off Racine at six o'clock in the evening; at six o'clock in the evening, we was all on deck; that is the mate, engineer, and myself were on deck; the fog lifted, and we were looking to see if we could see anything of the land. The sun was just setting. The fog lifted for a minute,

43

I should think, and we could discover a loom of the land; could just see a church steeple and a house as near as we could calculate. I made my calculation it was Racine. I headed her off then from the course; we was steering south by east half east; about nine o'clock the mate thought he could see land again. I looked, but I couldn't. He thought he could close aboard, he said, on the starboard bow. I then hauled her off two points more and she commenced roll-

ing so bad I had to haul her off east by north to keep her from rolling. We run that way twenty-five minutes. I then squared her away southsoutheast, and run that course till two o'clock in the morning; did not see anything. I calculated then that we was up abreast of Goose point or past it; hove the lead, could not get any soundings. I hauled her in then south by west, and kept the lead agoing. I think we run that way, south by west, for about half an hour, with the lead agoing occasionally, not all the time, but kept the lead agoing every few minutes; then I did not get any bottom. I hauled her in southwest; kept the lead agoing all the time as fast as they could heave it and haul it up, expecting that would find soundings down here about the Lake View House somewheres. I run that way, I think, somet wenty or thirty minutes; did not get any bottom; then hauled her in west; run, I should think, fifteen minutes; checked her down and kept lead agoing; struck bottom in nine fathom water; run along under a check, a very slow check, I think, in fifteen minutes I should think, shoaled the water gradually till we got into six fathoms water. I heard
44 a whistle blow, like a tug's whistle, bearing off about northwest; I should think it was off on our starboard bow, which I took to be, I made up my mind, was down here at the pier; they keep a tug out all night to tow vessels; I turned round and headed about north—about north by east, I think it was—made up my mind I had got past the piers, and run back under a slow check; kept the lead going about four fathom water; when I got back I had run along a few minutes to about abreast where we heard this whistle, and saw a light, which I took to be Chicago light; I got the light to bear west, and headed her in for it; when we got in soon after I headed her in for it, I saw a pier which I took for the Chicago pier; when I got up, I should think, probably, the length of the boat from the pier, the mate helloed to me—he was on the promenade deck and I was on the pilot-house, and had been most all the night; I had been there half the night—the mate helloed to me that it was a spile pier, and was not the Chicago pier; I immediately rung her bell to stop, and then rung to back, and soon as I discovered it was not the Chicago pier—soon as I discovered my mistake—I rung to stop and back right off; she run in till she got in about half her length past the pier before she brought up; about half of her was past the pier, and the other half of her stuck out. It was so foggy then that we could not see the shore from the boat. There had been a heavy sea
45 running all this time, although the wind had partially died away; along about midnight, and towards two o'clock, she commenced pounding, and I kept the engine backing; did not know by working her engine and pounding I might work her out of that; she did start a little, and the sea was so heavy setting against her from the northard that it swung her stern right around, so that she lay broadside to the shore. I see then that I could not get her off by working the engines; I ordered a boat lowered; lowered a boat, set the clerk ashore with orders to telegraph to Chicago for a tug. He came back and said he could not telegraph till seven o'clock in the morning; then I told him to go back and take the first train of cars and come up here. In the meantime I got out hawsers to the corner of the pier, and commenced heaving on them, and found that we could start her ahead, swing her bow out a little by working her engines; we got her started ahead so that she was within twenty feet of the pier, so that she went along every time we hove; we then got out several lines, and when she got up so near the pier she would keep parting them, they got so very short; we parted all our lines; then I sent a man from the pier up town to get a

hawser, and she parted that while we were heaving and trying to get her off in that way; during this time we hove over about two hundred barrels of water-lime; then the sea hove her around with the stern against the pier, where she pounded and rolled and chawed her
46 stern off; and we then gave up the effort to get her off, having used up all our lines, and decided to wait till the tug come; we then let in some water to keep her from pounding—not enough to damage the cargo—but not enough to come over the floor so as to damage cargo. The tug came to us between four and five o'clock in the afternoon; she brought a new hawser; got it to our boat, out of her chock forward, and commenced pulling; I got another line out to the pier and hove on that at same time; and at same time I hired men from shore to heave over water-lime and salt; at same time kept engine working pumping water out. We kept to work all night to about, I think, four or five o'clock in the morning, when we got off and started for Chicago, and reached there safely, leaking some. As we were running back after hearing the whistle, and when I supposed we were off the Chicago pier, I heard the cars running and the whistle of cars running backwards and forwards, as though they were making up a train, as they do on the Michigan Central & Illinois Central at Chicago, and supposed we was to the southard of the pier; hearing the trains running led me to suppose I had got past the pier to the southard.

(The libellants object to each and every portion of the above answer to interrogatory 4th as incompetent.)

5. At the time you consulted your engineer, upon what did you consult him, and what was said?

(Objected to as incompetent.)

Ans. About the amount of steam he carried, and the time he
47 was making, and the weather, &c.

6. As to the steam he was carrying, was it an enquiry as to the amount of steam he was carrying at that moment, or a——

Ans. No; it was an enquiry as to the amount of steam he had been carrying all along; as to the amount he had been carrying and was carrying.

7. Were you acquainted with the speed of the propeller; and, if so, how well were you acquainted with it?

Ans. I was; that was the fifth trip, I think, I had sailed her, although we had changed wheels once or twice; the two first trips to Lake Superior we had on new wheels.

8. At the time you saw the spire which you supposed was Racine, whose opinion was it that it was Racine?

(Obj. to as incompetent.)

Ans. It was my opinion, decidedly; and all the rest on deck was of the same opinion; it was the opinion of the mate and engineer.

9. How near had you approached to the pier, and in what condition of safety was you when you first heard the locomotive, and how long after you saw the light of the lighthouse did you hear the locomotives?

(Obj. to as incompetent.)

Ans. It might have been five minutes or more after I heard the whistle before I saw the light; I did not consider there was any danger then.

10. How does the lighthouse at Waukegan resemble the light at Chicago?

48 Ans. The lights are just alike; they are both white lights.

11. What portion of your crew agreed with you that it was Chicago; and what consultation, if any, did you have before you started for the pier?

Ans. The mate was on deck, and the first engineer was on deck, and when we heard the whistle we all agreed that it was a tug laying at the pier that heard our whistle, and was blowing to show us where the pier was; we had kept our whistle blowing all night; all day, in fact, at intervals.

12. At the time that you pointed your vessel for the harbor, had you any doubt that it was Chicago harbor?

Ans. I had not the least doubt of it but what it was; I don't think there was a man on deck that had any doubt about it.

13. Was there any way in which you could discover that it was not Waukegan light, or Waukegan harbor, at the time you supposed it was?

Ans. I supposed it was Chicago from the fact that it was the same kind of soundings, and same kind of bottom, and the lead was kept a going all the time up to within half a minute of the time we fetched up; I don't know of any way that it could be discovered.

(Libellant objects to the witness answering further in response to Mr. Rae, unless the question is reduced to writing. Witness resumed:)

I took all the precaution that I could think of to ascertain that it was Chicago, before I attempted to run in.

49 14. Please state whether any portion of the cargo belonging to the libellant was damaged in any way.

Ans. There was not any of it wet or damaged in the least. There was a few barrels with heads out when we delivered it, which was coopered up. It was in good order, and in no worse condition than we had delivered salt there before.

15. Was it in as good order as when you received it?

(Obj. to as leading.)

Ans. Just as good.

16. When you delivered it to the libellants did they sign a general average bond?

Ans. I think they had.

17. And what did you do with the balance of the cargo?

Ans. The balance was delivered at Hale's dock.

18. And was there a general average bond given for that?

Ans. Yes.

19. Please state what proportion of the cargo you jettisoned, and to whom it belonged and consigned, and what expenses were incurred in getting the propeller off.

Ans. One hundred & eighty barrels fine salt, consigned to C. Comstock; eight hundred and forty-four ground solar; I don't think that much was thrown overboard; what I mean by that is, that our clerk did not count it, but took Mr. Comstock's count that was consigned to C. Comstock.

(The libellant here states that the witness is answering from a
50 paper which he never saw before, and libellant objects to witness testifying from the paper before him. The witness states that he is stating from what he knows.) I throwed over all the water-lime and cement, somewhere about a thousands barrels; I can't tell what proportion was water-lime or cement. This was consigned to Mr. Neely. There was two half-barrels of fish consigned to Sample that was wet. There was some packages of glass that was thrown over.

20. To whom did the glass belong?

Ans. To Lewis Ham & Co.

21. Do you know what expenses were incurred in getting your vessel off?

Ans. I never footed them up; I had all the bills at one time.

22. Look at the paper now shown you—a general average statement—each item of expense in getting her off, and state from your own knowledge if each item is correct.

(Libellants object to witness examining the paper or to it being handed to him.)

Ans. I have looked over the items of expense in getting my vessel off, and they are correct. The tug George Wood, $393 50, is correct; for hawsers used up in getting her off, $44 85, is correct; for prepairing in-
voices for damages, ($50,) fifty dollars, is correct; Hale and Com-
51 pany, owners of vessel, for extra laborers getting off, forty dollars, is correct; my clerk paid that telegraphing, six dollars, is correct; clerk's expenses to Chicago for assistance, twenty-five dollars, is correct; damage to lines as appraised by Captain McGill, one hundred ninety-four dollars and forty-eight cents, is correct; wages and provisions of master and crew getting off, eighty-five dollars & seventy-five cents, is correct; Doolittle and Olcott bill for repairs of damage getting off, sixty-nine dollars and eighty-six cents, is correct; for loss by jettison on freight, six hundred and fifty-eight dollars and forty-two cents, is correct; survey of damage to hawser and lines paid to Captain McGill, ten dollars, is correct; report, bond, advisement, and copies, seventy-five dollars, paid to S. T. Atwater, is correct. That is all the expenses in getting her off, I think. These items I have called off are correct, for I had the bills.

23. Could a vessel with her cargo have been brought to Chicago without incurring these expenses?

(Obj. to, incompetent & irrelevent.)

Ans. I don't think it could have been done with any less expense, using the best of my judgment, in getting her off.

Cross-examination—Mr. Waite:

1 x. Did you ever see the general average statement, from which
52 you have been testifying, till it was handed to you to-day?

Ans. I may have seen it with rest of the papers, but never examined it.

(Mr. Rae objects to form of question on the ground that witness on seeing the paper folded it up, and said he would testify from his recollection.)

2 x. In testifying to expenses incurred, did you not read from the general average statement?

Ans. I did.

3 x. Can you swear to the expenses from your own recollection of the same?

Ans. I think I can; it would take a little time—a good deal of time to think over the different items.

4 x. Was not your testimony of the expenses given from the general average statement, and not from your memory?

Ans. Well, partly so; some items and bills that I knew about—that is, bills that I have seen.

5 x. How much do these expenses that you can swear to from memory amount to in dollars & cents?

Ans. I don't believe I can swear to any of it from memory. I might read that paper over a dozen of times and not be able to tell the amount a moment afterwards. I might look over all the bills at once and not be able to tell each one, even if I had paid them all myself.

6 x. When you swore to the quantity of goods thrown overboard, did you not read from the general average?

53 Ans. I did.

7 x. How many barrels of fine salt was thrown overboard?

Ans. I don't recollect.

8 x. How many of solar salt were thrown overboard?

Ans. Eight hundred and forty-four, I think it is.

9 x. How many barrels of marble dust were thrown overboard?

Ans. I don't know; it was all thrown over, whatever there was.

10 x. How do you know that eight hundred and forty-four barrels of solar salt were thrown overboard?

Ans. From reading the paper.

11 x. What paper?

Ans. The general average paper, I suppose.

12 x. The one that was handed to you while you were testifying to-day?

Ans. Yes; all I know what was thrown over was from Comstock's count or what he was short; I did not count it short; I counted it aboard at Buffalo myself.

13 x. Did Mr. Comstock tell you anything about it?

Ans. No, sir.

14 x. How old was the Portsmouth in October, 1866?

Ans. I don't know her exact age; she was rebuilt three years ago this winter; she had some seventeen thousand dollars paid out on her for repairs on her hull; it may be but two years.

15. Did she have a good engine at that time?

Ans. She had a good engine; as good as there is.

54 16 x. How did she rate?

Ans. I don't know about that; I think she classed B 1. I won't be sure about it. I don't know but she classed higher. I never looked at her classification.

17 x. How much grain would she carry and tonnage?

Ans. She had in some 25,000 bushels barley and deck load besides; her tonnage is 650, I think; she rates this new measurement something over six hundred.

18 x. How was she supplied in October, 1866?

Ans. She was well supplied.

19 x. What was she worth in October, 1866?

Ans. I think they paid twenty thousand dollars for her; I should judge she was worth that.

20 x. What time of day did you leave Fox island; of what day?

Ans. I think it was between 7 & 8 in the evening, the night previous to going ashore; I don't recollect day of the month.

21 x. What is the distance from Fox island to Chicago?

Ans. It is about two hundred and sixty miles; I think it is.

22 x. What time was it when you reached Waukegan?

Ans. It was between three and four when we went ashore—nearly four o'clock.

23 x. How high is the promenade deck above the water on the Portsmouth, loaded as she was that trip?

Ans. Something about three fathoms from her rail to the water; something less from two and a half to three fathoms. The watch-
55 house or pilot-house top is twelve feet above the promenade deck.

24 x. In what direction did wind blow when you left Fox island?

Ans. Northeast.

25 x. In what direction did it continue to blow till you run ashore?

Ans. It varied from about north-northeast to east to northeast. It blowed steady from northeast till along in the afternoon, after we left

Fox island on the next day. It canted a little, some more to the northward, but pretty steady from the northeast.

26 x. In what direction was wind blowing when you reached Waukegan, and how many knot breeze was it?

Ans. The wind was northeast and had partially died away, and I don't suppose over a nine-knot breeze, with a big sea running.

Adjourned by consent till Saturday at 11 o'clock a. m.

J. C. REILY, *N. P.*

Met pursuant to adjournment, and cross-examination of the witness Steele resumed with 27th cross-interrogatory.

27 x. How many knots was the wind blowing at twelve o'clock the night after you left Fox island; and what way was it blowing and how long did it so continue?

Ans. I should judge at twelve it was blowing a ten-knot breeze
56 for a sail vessel from the northeast, and continued to blow all the next day from that quarter; it might have varied a point or two during the day. It blowed fresh all the day a ten-knot breeze; might have varied a point or two during the day, so that we carried our sail all day.

28 x. That's what you call a fresh breeze, is it not?

Ans. I should call it pretty fresh.

29 x. When you hauled her off two points more, how many knot breeze was there?

Ans. When I supposed I was abreast of Racine and hauled her off south-southeast, I think the wind did not blow quite as fresh as it had been blowing. The wind baffled then, and we had to take our foresail in on account of its jibeing about. Ten or twelve o'clock that night it freshened up again and blue harder, and the thing that caused us to take our foresail in was we were afraid of coming suddenly on a vessel; could not avoid her as well with our foresail up.

30 x. Then you did not take in the foresail because the wind blew so hard?

Ans. No, sir.

31 x. How far could you see the light of a vessel that night?

Ans. I don't know, for I did not see any. I don't think we could have seen a vessel's light over once or twice her length. I am mistaken and will correct it; we did see one vessel at time we hauled off east by north, where mate thought he could see land.

57 32 x. How fast was the propeller going when you took in the foresail?

Ans. I can't exactly say, but I judge at the time she was about going between some eight and nine miles—nine miles, perhaps.

33 x. After you took in the foresail, how fast was the propeller going?

Ans. I had no means of knowing, only from the amount of steam she was carrying; we were carrying about same amount of steam. She was rolling.

34 x. Could you tell how fast the propeller was going at any time after she left Fox island? Answer question yes or no.

Ans. I can't tell any other way only amount of steam she was carrying.

35 x. What kind of bottom was it where you struck bottom in nine fathoms water?

Ans. I asked mate what kind of bottom it was; he told me it was hard bottom sand.

36 x. What kind of bottom was it when you struck bottom at six fathom water?

Ans. Soft.

37 x. Sand or gravel?

Ans. Sand, I think, as near as I could judge.

38 x. Did you examine to see?

Ans. I was on the pilot house, and took the mate's word for it.

39 x. Previous to your touching bottom in six fathoms, what had been the previous soundings to that?

58 Ans. As near as I can recollect, it shoaled gradually along as we were running in under a check.

40 x. H many fathoms water was there when you heard what you call a tug's whistle?

Ans. There was then five fathoms, I think; we was in then four and a half to five.

41 x. Could you not have staid where you was, when you heard what you supposed was the tug's whistle, till daylight?

Ans. I think it could have been done by hauling off into the lake. If I had not been sure it was Chicago harbor, I should probably have done so.

42 x. Could you not have anchored where you were?

Ans. She was rolling too bad to let go an anchor with safety. There was too much sea to make it very comfortable.

43 x. Was there any difficulty in your going further out into the lake and waiting till daylight?

Ans. It could have been done, and I should have done so if I had not supposed I had found a harbor.

44 x. You then could have done it if you had chosen to?

Ans. It could have been done.

45 x. If this had been the tug as you supposed it was, could you not have signaled her to come out to you to show you where the harbor was?

Ans. I did not think it was necessary. I was confident it was the harbor.

46 x. Will you answer my last question?

59 Ans. I could have blowed a whistle, and perhaps she would have come out and perhaps she wouldn't. They don't always come out when signalled for propellers; we were blowing our whistle all the time, at least every few minutes, and supposed that was a signal.

47 x. Did signal that tug to come out to you that night? Answer yes or no.

(Objection to instructing witness how he shall answer question, as he could answer in any way he pleases.)

Ans. I considered that tug was answering our whistle when I heard her blow; we had blowed our whistle and made up our mind she was answering of it.

48 x. Cannot you answer my last question without instructions from your counsel, Mr. Rae?

(Objected to on ground that witness has already answered question, and that I had not given witness any instruction other than appears in deposition, as he had a right to answer any question.)

Ans. I did not blow no whistle for her to come out in particular. If she had come out, she would have been in fog as much as we was after leaving piers, unless she had steered a course out to us; perhaps that would have helped some. When tugs are laying that way at pier, we don't signal them to come out; we go by sound of whistle.

49 x. Then I understand you to swear that you did not signal her that night to come out to you?

Ans. No; I did not.

60 50 x. Do I understand you to swear that if you had signalled what you supposed to be a tug to come out to you, and she had come out, it was so foggy she could not have found you?

Ans. I don't swear to any such thing.

51 x. Then she could have found you if she had gone out?

Ans. I think so.

52 x. How could she have done it?

Ans. She could have done it by sound of the whistle.

53 x. Not otherwise?

Ans. No, sir.

54 x. What difference is there between a tug's whistle and a locomotive whistle?

Ans. Some of them there is no difference; some locomotives have a whistle similar to some of the large tugs that tow in the river.

55 x. What time was it when you saw the light?

Ans. It was somewhere between three and four o'clock. I was on pilot-house, but I could not see my watch. I had a watch in pocket, but could not see what time it was.

56 x. When you got the light to bear west, and headed her for it, had you any land-maks to go by except that light?

Ans. No land-marks; nothing to go by except this light, and the sound of the locomotives going up and down to southard of the light.

57 x. What was the sounding when you headed for the light?

Ans. Four and a half fathoms.

61 58 x. What the bottom?

Ans. Soft bottom.

59 x. Mud or sand.

Ans. I think it was mud; don't recollect it. I asked him about mud or sand; we were heaving along pretty fast, so as to get soundings.

60 x. What was the sounding when you saw the pier, and what kind of bottom?

Ans. I think about three fathoms, about two and a half or three; told them to take in lead when I saw pier; I think it was two and a half. I did not ask mate what bottom it was, I think not, the last throw.

61 x. How long was it after you headed for the light before you saw the pier?

Ans. I don't think it was over four or five minutes. I could not tell exact time, for I had no way of seeing what time it was.

62 x. How fast were your running after you headed for the light before you saw pier?

Ans. We might have been running at rate three or four or five miles an hour; could not tell exactly; was under a check.

63 x. How long was it from time you saw pier till the mate helloed to you that it was not Chicago pier?

Ans. It could not have been over a minute or so; we had got almost up the pier, abreast of it, before he discovered it was not Chicago piers. The bow was not over forty feet distant. It might have fifty or sixty feet distant.

64 x. Had you charge of the boat at that time?

62 Ans. I had charge of the boat in taking her into the harbor. The first and second mates were on deck. I don't know if second mate was forward or not; we were getting lines ready to go into port. The

clerk was on deck. We had called hands, and getting lines ready to go into port.

65 x. What was mate doing at time?

Ans. He was standing on deck, I presume, looking for the light. The first engineer and clerk were up there on deck, all waiting for the signal, and looking out all they could.

66 x. Had you directed them to look out?

Ans. I had.

67 x. When?

Ans. They had been looking out for the light an hour or more previous to that; two hours nearly been looking for a light.

68 x. Was the mate giving any directions in regard to steering of the vessel?

Ans. No, sir.

69 x. Could you tell what pier it was from where you stood?

Ans. I supposed I could tell. I found I was mistaken.

70 x. Then you could not tell what pier it was from where you stood?

Ans. I was so surprised when I fetched up that I could hardly tell them what pier it was; could not imagine what pier it was for a minute. Then my attention was turned to try and get out of that.

63 71. Then you never discovered that it was not Chicago pier till the mate sung out?

Ans. No, sir.

72 x. Did you ask his opinion whether it was Chicago pier prior to his so singing out that it was not Chicago pier?

Ans. I did. They all pronounced it Chicago pier as soon as they saw it; the mate, clerk, and engineer.

73 x. Have not all towns on the west side of Lake Michigan, south of Sheboygan, piers? I mean harbor pier.

Ans. No, sir.

74 x. How many have?

Ans. Milwaukee, Racine, and Kenosha have harbor piers. Waukegan is a different pier; so is Port Washington. Amsterdam have spile piers.

75. What is the difference between the pier at Chicago and Waukegan?

Ans. One is a solid pier, and the other is on spiles, so that you can look under it.

76 x. What is the difference between the light at Chicago and Waukegan?

Ans. They are both bright lights; one stands on a pier, and the other stands on the shore.

77 x How many bright lights are there on this side of the lake like the Chicago and Waukegan light, and this side of Sheboygan?

Ans. I think Port Washington light is one; Milwaukee light is a flash light; Kenosha is a flash light; Racine light they were repairing last year. I don't recollect what kind of light they did use.

64 78 x. Had you any land-marks to steer by when you undertook to enter what you say you supposed to be Chicago, except the light and the pier?

Ans. No other land-marks, except the lead to run by.

79 x. Will you swear that the bottom is the same at Waukegan that it is at Chicago?

Ans. It is very much the same.

80 x. Is not the bottom at Chicago sand?

Ans. It may be some sand, clay mixed with it. I had let go frequently an anchor off Chicago.

81 x. Is not the bottom at Waukegan gravel?

Ans. I think no.

82 x. What is it, then?

Ans. Sand, clay, what experience I have had with it; I have never studied the chart. I used to run there years ago every trip; used to be plenty of water there for boats to load.

83 x. How high is the Chicago light above the water?

Ans. I don't recollect; I have seen it frequently laid down in books, but don't recollect.

84 x. If you had waited till daylight before attempting to go into the harbor, would there have been any difficulty in determining that it was Waukegan and not Chicago?

Ans. I think I could have seen a little plainer.

85 x. Then if you could have seen plainer, you could have told that it was the Waukegan piers?

Ans. I might not have been able to have told them so as to have run in; I have seen it so foggy that you could scarcely see the dock,
65 when standing on the upper deck.

86 x. Will you answer my last question yes or no?

(Same objection that witness is not bound to answer yes or no.)

Ans. If I could have seen a good deal plainer, I could.

87 x. Do you steer the same course in going into Waukegan that you do in going into Chicago?

Ans. The piers lay very much the same way as to course. They may vary a point or so.

88 x. How much water did you draw that night?

Ans. I think we drew near ten feet forward, and eleven aft; perhaps eleven and a half aft.

89 x. What absolute necessity, if any, was there for you going into the harbor before daylight that night?

Ans. The boat was rolling round pretty bad, and I wanted to get her into port; she was laying out there and rolling.

90 x. Then the only reason was that she rolled badly?

Ans. Principal reasons was I supposed I had found the place and could go in with safety.

91 x. Did she roll so as to be dangerous?

Ans. No.

92 x. Are not trains made up at Milwaukee, Racine, Kenosha, and Waukegan as well as at Chicago?

Ans. I presume there are.

93 x. Don't trains run at all those places, and do not the car whistle sound about the same in each place?

Ans. Trains run at all those places; they don't generally get as close to car whistles as they do at Chicago, as close to shore except Racine.
66 94 x. What kind of a day was it following the morning you ran ashore; blowing, foggy, or what kind of day?

Ans. It was foggy. The fog cleared up some time in the forenoon, with strong easterly wind blowing fresh and a big sea setting in.

95 x. What time of day was it you commenced throwing salt over?

Ans. We commenced throwing salt over soon after tug commenced pulling.

96 x. What time was that?

Ans. She commenced pulling, I think, somewhere about half past four.

97 x. How did wind continue after tug got hold of you?

Ans. It blew fresh till about midnight; we then got her canted round and heading out into the lake; we stopped throwing over salt about that time—soon as she started any.

98 x. Did she make any water previous to your stopping throwing salt off?

Ans. Nothing but what the engine could keep free.

99 x. Did you haul her out to make repairs at Chicago?

Ans. No; did not till we returned to Buffalo; did haul her out there; I found her bottom was pretty well used up.

100 x. Could not the salt have been lighted ashore?

Ans. It could not at the time; there was too much sea, and there was nothing there to light with.

101. Did you try to?

Ans. I tried to find boats to see if we could get anything off,
67 and found there was nothing there, scows nor anything.

102 x. Could not one have been brought from Chicago as well as the tug?

Ans. I think not; the tug had about all she could do to get down there. The weather looked as though we were going to have a heavy gale of wind that night, and I thought it was best to get her off there as soon as I could.

103 x. Were there not vessels at Waukegan?

Ans. No, sir.

104 x. How was bow of the boat from end of pier?

Ans. From what time, at time we parted our line, her stern swung round against the pier.

105 x. How long did her stern lay against the pier?

Ans. Lay there all day chawing and working up and down till tug come; that is balance of day from time we parted our lines. Her stern lay within about ten feet of some spiles—formerly an old pier, which I was afraid she would get on to, lying just even or above the water.

106 x. Did you try to get any of the salt over the bow on to the pier?

Ans. I did not; there was no way of doing it, no gangway.

107 x. How far was the top of the bow above the top of the pier, if any?

Ans. I should think her stern was about 6 or 8 feet above the
68 top of the pier; she had chawed her stern off below, where her anchor chock come just about.

108 x. If there had been a gangway there, could not the salt have been rolled on to the pier?

Ans. If we could have kept a plank there; if there had been a gangway we could have done something; it was as much as we could do to climb down from her bow on to the dock.

109 x. Is not the light at Waukegan on the high ground and away from the pier?

Ans. Yes; it is.

110 x. How many feet would you think it was above the water?

Ans. I don't know as I could tell.

Re-direct—Mr. Rae:

1st re-direct. At the time you started for the Waukegan light, had you any doubt but that you were going into Chicago, and when did you first doubt its being Chicago, and what did you immediately do?

Ans. I had not the least doubt in the world but what it was Chicago, and I did not discover my mistake till about the time the mate sung

out, and says this is a spile pier, this ain't Chicago; immediately rung the bell to stop and then to back.

69 TRUMAN W. STEELE.

Subscribed and sworn to fefore me this 16th day of February, A. D. 1867.

JOHN C. REILY,
Notary Public for the City of Chicago.

Deposition of George Hendrey, taken by George Gorham, a United States commission, in the city of Buffalo, in the State of New York, on the fourth day of April, A. D. 1867, on behalf of the respondent.

I reside in Buffalo, N. Y.; I am an engineer—practical vessel engineer; I have been engaged as engineer upon steamers on the lakes for eighteen years. In October, 1866, I was chief engineer upon the propeller Portsmouth. I took charge of the engine and kept her in order. I had no duties on deck. The engine of the propeller was in good order in October, 1866. I remember the propeller running ashore at Waukegan, in October—early part of the month; but I do not remember the date; it was between two and four in the morning when we ran ashore. I turned in at one o'clock the afternoon before, and got up at four in the afternoon; I turned in again about eleven in the forenoon of the day we went ashore; during that time I laid down for half an hour. This was
70 about one o'clock at night, from four p. m. till one a. m., when I laid down; I was on deck till six, and then I was attending to the engine till I laid down; I got my supper along about six. It was blowing pretty fresh during the evening, with some fog; it had been blowing heavily all day. I do not think we could see over two miles or perhaps three in the day time; there was a heavy fog over the land; it concealed the land from our sight. There was a heavy sea. We can't calculate the rate of speed of a vessel as well in a heavy sea as in smooth water; if a sea is running after a boat it drives her, and if ahead, it impedes her, and we can't calculate very well how much. The wind on this occasion was on the port quarter, and was I believe, northeast. Steele was captain of the propeller at that time. Before I had my supper, I remember consulting with Captain Steele as to where we were, and about what time we should get to Racine. I asked him where he thought we were. (This under objection.) He said we were about off Racine. This was between four and six o'clock p. m. I can't say whether it was before or after supper; it must have been before. Before I went down to supper I could see what I thought to be the land. I did not notice the fog having lifted. After going to supper I can't say when I came on deck; I was not on deck frequently during that night. My first recollection of being on deck that night after supper was when I went on deck to call my second, which was generally
71 about half past twelve; I did not remain on deck any length of time then, not long enough to observe the weather. After one o'clock I went on deck and staid there, except the half hour I was turned in, till she went ashore. The two mates and the captain and the lookout and myself were forward from the time I went on deck till she went ashore; also, the wheelsman was in the pilot-house, which is forward. I do not remember the name of the lookout; the lookout was forward and aft occasionally, looking after fire and such things. During this time we were on deck the wind had lulled a little, and it was foggy; it lulled about two o'clock. There was a heavy sea. It was so foggy you

could not see very far. Taking the fog and darkness together, I do not think you could see more than 125 feet. I was not on duty after one o'clock; it was not my watch; I was on deck because I could not rest—felt anxious—wanted to know where we were. I very seldom sleep in bad weather. I kept forward and occasionally went to the second engineer to tell him to keep sharp look for the bells; the captain had charge of the bells; this was all I did. I saw the captain and two mates on deck watching and looking for the land with their glass; also, they were casting the lead and she was checked several times; I think the second mate cast the lead, and sometimes the mate.

72 Q. Was everything done that could be done to ascertain the whereabouts of the vessel?

(Counsel for libellant objects.)

Ans. Yes, sir; to the best of my knowledge I heard the officers talking among themselves; they were talking about then we ought to be near Chicago, or something of that kind; I can't recollect exactly; I remember a short time before our going ashore hearing a whistle from the shore; I can't say what the whistle was; the captain blew our whistle and we got an answer, but I can't tell what kind of a whistle it was; I thought it was a tug whistle. I thought we were abreast of Chicago at that time; I thought so from the time we left the "Foxes."

Q. Did you hear any one express an opinion in reference to this subject?

(Objected to.)

Ans. I did; the mates and captain mentioned it.

Q. What did they say in regard to the locality of the vessel?

(Objected to.)

Ans. They blew the whistle and it was answered; they said that they thought the whistle came from a tug coming out from Chicago; then again they would say, that may be a locomotive whistle; they kept on talking. I had nothing to say; I was only standing by; I heard the whistle about an hour before we ran ashore; it may have been as little as a quarter of an hour; at that time if I remember right she was under check, and I don't think her speed would cover 2½ to 3 miles an

73 hour. The lead was hove frequently. I saw some light; could not say whether it was the lighthouse light or not; I thought it was Chicago lighthouse light; I thought so from our time of running, and because sometimes it would loom up and I thought it was a tug light, and then it would be dull again; I could not say whether it looked like the Chicago light or not; I was not on deck long enough; I ran down to tell the second engineer to be ready for the bells. I saw the light after I heard the whistle. I could not see the land or pier when I first saw the light; when I saw the light I ran down to the engine room; I told the 2d to stand by and be ready to back her. I took out one of the gangways. I told him so because we came on the light so sudden; I told him "Henry, be ready to handle her and back her, for we are going into Chicago, for we have seen the light." I was down below then about a quarter of an hour, by what I did. I took out the gangway and looked out of it; just as I looked out I heard the bell ring to stop her, and then went to the engine. From the time I went below till the bell rung to stop could not have been over three or four minutes. From the time the bell rung till the vessel struck I do not think it could have been over 4 or 5 minutes; it may not have been over two; I know it was a short time. When the bell rung to stop I slacked the small set-screw myself, and then the second engineer reversed her; this was done as soon as possible after the bell rung. The vessel struck before

74 I went on deck again. I did not go on deck as soon as the vessel struck. It was ¼ to half an hour before I went up. I started the pony while the second engineer was backing her. After she struck, and we had worked her, backing her some time according to bells, the captain came down and said she was ashore, and he did not think he could get her off without help. Then he told me to open the sea-cock to let water in the hold, to keep her steady, to sink her down so the sea could not break her up. The sea was raising her up, and then letting her fall pretty heavy. The letting the water in was proper to be done under the circumstances. I think the vessel stopped a short time after the engine was reversed. Then I got word again to shut the sea-cock, and I did so, or the second did. It was done. We pumped up one boiler, as we had considerable fire in, and then I went on deck.

When I went up on deck, I met captain right by the whistle. There was a propeller passing down, and he blew the whistle several times to see if he could not get her to come and pull us off. She did not come. It was then kind of breaking day. It was some foggy. There was swell enough to raise her up and let her drop pretty heavy. I could see the light then, which proved to be Waukegan lighthouse. When I got on deck I could see the pier. The pier was not over 50 feet from the vessel. We were to one side of the pier. The lighthouse is not on the pier, but upon the hill. The vessel was on the west of the pier—to
75 the right of it. We had run our vessel all in some ten feet inside of the end of the pier. We got a line out to the end of the pier to heave her ahead to try and get her off. There was deeper water ahead than where her stern was. The result was that occasionally she would go ahead a little. We worked in this way till the lines broke. We did not then succeed in getting her off. We kept heaving away at her some time. I was up and down by the engine. Soon after the captain started the clerk ashore either to telegraph or take the train to Chicago to get a tug to pull the boat off. The clerk got ashore, and the captain had forgotten to tell him to get a hawser in Chicago. I went ashore, and told the clerk to get a hawser and send up by the tug. When I got aboard again, they were working the engine, and trying in other ways to get her off. Finally about six (in the morning) the captain talked with me or the mate about throwing overboard some salt or lime to lighten her. The vessel at this time was thumping heavily on the bottom. Her stern was pretty well on the piles of an old pier. They said they'd throw off some of the cargo; enough to lighten her up.

Q. What was the object of lightening her up?

(Objection.)

Ans. So as to get her into deep water again.

Q. Was it proper in your judgment under the circumstances to throw over a portion of the cargo for the purpose of lightening her up?

76 (Objected to. It does not appear that the witness is competent to give any opinion about it.)

Ans. Yes.

Q. What would be the natural consequence of allowing the vessel to remain there as she was without lightening her?

(Objected to—that it is not a proper subject for the witness to guess about—not shown to be competent on the subject.)

Ans. She was injuring herself by being raised up and let down, and we did not know but that in five minutes the wind would come off the lake and break her up. There was not enough water let in to hurt the cargo, or cover the floor of the vessel. A portion of the cargo was thrown off, but at what time I can't say. I saw some of it thrown over.

board, but I was busy about the engine and I did not pay particular attention. A tug came in the afternoon from Chicago, and assisted in getting us off. The tug got there about two or three o'clock in the afternoon. It was pretty calm about that time—some sea running. Fog had cleared away. After the tug got there, made fast the hawsers to us and to the tug, and she pulled us off. There was some cargo thrown over after the tug got there. The engines were working at the same time the tug was hauling. We were pumping water out at the same time. After the tug came, they worked till two or three in the morning, and then I went to sleep, and the vessel was not off then. When I woke up the vessel was off. It was half past four or five o'clock in the morning. I took no notice of cars running back and forth on the land previous
77 to our striking. I have been on the vessel since Agust of that year; been engineer for 18 years on the lakes; served on vessels running from Buffalo to Chicago for 15 years. I am a pretty good judge of the land, when I see it. If I see Chicago I knew it. I am familiar with the different localities along the lakes. I am not familiar with the management and running of propellers. I mean I do not consider myself competent to act as captain in running a propeller from Buffalo to Chicago. Chicago and Waukegan are both white lights.

Being cross-examined by the counsel for the libellant, the witness said:

The afternoon before we went ashore there was about a ten-knot breeze. As far as I remember this was all the time off our port quarter. At four p. m. it was blowing fresh ten-knot breeze. It lulled after four, but at what time I could not say. I don't think it had lulled between four and seven. There was considerable sea during that time. There was not enough to intefere with our navigating the vessel at all. During that time you could see a loom of something, but I could not tell whether it was the land or not. I can't say how far we could see; might see a mile or two; might by paying attention see two or three miles. I could see there was a heavy fog over the land. The fog was not quite so
78 heavy over the water as over the land; could see on the water side five or six miles and on the land side not over two or three. I think I could tell where the outlines of the land were. We seemed to be steering out a mile or two from shore; this is according to the best of my judgment. I can't say whether we kept along about that distance from shore or not till dark. We kept on same course all the time, except as we changed to avoid a sailing vessel ahead of us. It was about seven o'clock when I first thought we were off Racine. I did not think anything about it myself. I merely asked the captain or mates. I had some idea of it myself aside from what was told me. I thought we ought to be between Milwaukee and Racine—somewhere there—by the time we were running from the "Foxes." Can't tell how far Racine is from the "Foxes."

Q. How can you tell that you ought to be off Racine from the time you had been running from the "Foxes," when you do not know the distance?

Ans. I know from the boat's time. When we run from one port to another I mark down the boat's time, and then I know how long it takes her. We left the "Foxes" from two to four the afternoon before; can't say exactly, but I think it was about two. I had never marked the time of the Portsmouth from the "Foxes" to Recine. I do not know how long it takes the Portsmouth to run from the Foxes to Racine. I think the Portsmouth made about nine miles an hour after she left the Foxes; it may have been ten. I did not know then

79 more than I calculated from the steam and wind. I calculated she was going then between nine and ten miles an hour. Had no other idea that we were off Racine except from the length of time we had been running from the "Foxes." I did not know the distance from the "Foxes" to Racine. I know we had made nine miles, but could not say whether we had made ten miles or not. I did not notice whether there was more or less fog at six than at four. We might see from two to four miles ahead in the course we were steering. From seven till 12 p. m. I did not go on deck to notice the weather, but I noticed it from the gangway. I looked to see if the sea was gaining on us or making. I could judge a little by looking out of the gangway whether the sea was increasing or not. I did not pay much attention to the fog. I noticed before I went off duty that the wind had lulled and the sea had decreased. I was looking out to see whether we'd have a hard time getting to Chicago. I thought we would not have as much trouble as I had supposed in the afternoon we would have. I went on deck after one, say half-past one, when I went forward to the stern. It was pretty foggy—more so than it had been at six. The wind had lulled down to five or six knots. The sea had continued to diminish. I staid forward till about four o'clock. I was back and forward between the forward and engine room. I was not on duty. The next thing which made me think we were getting near harbor was the
80 report of the man casting the lead to the captain, who was on the pilot-house. The color of the water also made me think we were nearing a harbor; it was kind of muddy. There was some difficulty in telling the color of the water, but I could see. I could not tell how many fathoms of water there was; I did not pay that attention. There was nothing alarming about the weather, so far as the boat was concerned. The weather was bad, and we were anxious to know where we were, and we expected it would come on to blow. I heard something said between the captain and mate in regard to our being near to Chicago. This was somewhere about three o'clock, about an hour before we went ashore. During this hour the boat was under check, every now and then, so as to cast the lead. I can't say whether she was under full headway any of this time. I think she was during that time brought to a stand-still. I can't say when, during that time, this was. I would not be much afraid to swear she was at a stand-still, but at the same time I can't ber certain. I can't say either way whether she stopped or not, but she was not stopped more than once. I can't tell exactly how long, before she went ashore, she was stopped. If I had been on watch I should have been more attentive. I forget when it was she was stopped. She was checked in order to cast the lead
81 chiefly. It is necessary to check the boat to cast the lead. There was no difficulty in stopping her. I can't exactly say how long she was stopped; I am bothered about it, and can't recollect. We touched shore about four o'clock. From a half an hour to an hour before we struck the captain concluded he had gone by Chicago. Then he turned around and went back. This was about an hour before we went ashore. From the time we turned around we were under a check, and ran perhaps three miles an hour. We could see fog and water when we turned around. I don't know what else we saw. I did not hear them say what they saw. I heard the captain say he thought we were past Chicago. This was before we turned about. The captain said from the time we had been he thought we had passed Chicago. I don't know he gave any other reason. I can't say what the mate said. They did not see this light before they turned around. We ran about

half an hour before we saw the light after we turned about. I think the light was on our port bow, and we were going down the lake towards Milwaukee. I saw a red light and a white one. I saw the white one first, and inside of five minutes I saw the red. I did not see both together at any time. Waukegan light is up from the beach. The harbor is made by the pier. The light is 300 or 400 or 500 feet from the beach. It is about half as high as the Cleveland light. It
82 is a little about the pier, towards Chicago. We ran aground on the side of the pier towards Chicago. The Chicago light is on the starboard side going in. It is on the end of the pier. I heard the whistle before I saw the light. It sounded as if it was down the lake towards Milwaukee. It was just about as we were turned around. I think we blew, and the other answered. I thought it was a tug, because I saw a white and red light in the direction of the whistle. I could not tell whether they were coming towards us, but they seemed to be, and they bore nearly ahead of us, between that and the port bow. When I saw the light I put for the engine room; I put to be on hand in case I was wanted. It was foggy, and I wanted to be on hand. I staid below till she went ashore. I think we heard the whistle first. It was perhaps three to five minutes before I saw the light that I heard the whistle. I took it for a tug light. I saw a light on shore. I saw several lights. I could not say whether it was a lighthouse light. I did not remain on deck long enough to tell whether it was Chicago light or not. I don't know as I saw any light I mistook for the Chicago light. I think one of the mates said he thought that was a locomotive whistle. I did not pay any more attention to the conversation. I heard no more. I saw a white light and then a red one, and then I saw other lights, and
83 I thought that was Chicago. I did not think the white and red were Chicago lights. I supposed the lights ashore were the Chicago gas-lights. I don't know as I saw any light I thought was the Chicago lighthouse light, because I did not stop on deck long enough. The boat struck in from one to three minutes after I got down into the engine room. It may be five; I can't say. She ran into the mud and sand. I got signals to back her, and I did back her. I think it was about nine a. m. that they first threw overboard some part of the cargo—it was in barrels, and stowed on the main deck. I can't say how long they continued to throw over. My idea is, that they threw the chief part of the deck load over. I was working the engine, and cannot tell. The stem had not run up out of water. The main shore was 250 to 300 feet from where the vessel was. The stem was resting on an old pier. We were laying across of where vessels go in to land. Between four and five I came up on deck, half an hour or an hour after she struck; I mean when I went forward must have been about an hour after she struck. The vessel remained in that position till about ten or eleven o'clock. It was while she was in that position that they threw these barrels overboard. The pier was a timber pier, 35 or 40 feet wide. The stem [bow] of our vessel was 20 or 25 feet from it. It is planked over. They drive out on it. We did not take the salt and lime out on the pier, because
84 it was not very handy. I don't know that they tried to do so. The sea had gone down some, but there was a heavy ground swell. The wind had gone down some. The fog was pretty well played out about that time. I think it began to disappear about sunrise, about six o'clock. It was some foggy at daybreak; can't say how it compared with six o'clock the night before. I do not, however, think it was as foggy then. From ten o'clock, the vessel worked in more towards the shore, inside the pier. The sea worked her in. We were working the engine

backward and forward. She worked in some 25 or 30 feet towards the shore from that time till the tug came, which was between two and three o'clock. I know some cargo was thrown off after nine or ten o'clock. They threw off salt, water-lime, and plaster; all was in barrels. That was after the tug came. There was a good deal of difficulty in putting it off on the tug and so on the pier. The tug was low and the pier high, and while we were saving 50 barrels in that way, the propeller would make a go for it. Threw off considerable after the tug came. The biggest part of what was thrown off was done after the tug came. They took it out of the hold. We were trying to get her off from four a. m. till the tug came. I helped till I got beat out; I can't tell what the rest of the men were doing. The ropes kept giving away all the time
85 one after another. I was asleep when she got off; I went asleep about two a. m., and we got off about four a. m. I have sailed now for 25 years. I have taken trips on sailing vessels when I was young, as hand before the mast, perhaps six months; been chief engineer about eighteen years. Commenced here on the lakes.

Being again examined by counsel for respondent, the witness says:

The cargo consisted of salt and water-lime. I don't know where the water-lime was stowed. I saw them hoisting barrels out of the hold for the purpose of throwing them over. The barrels on deck were on the main deck, which is covered. It appeared to me the white and red lights were moving. I saw some lights on shore afterwards. I looked at the white and red lights, and supposed they were on a tug and moving. I first saw the light which afterwards turned out to be the Waukegan light when I took out the gangway down below. When I first saw it, I knew it was not Chicago. I had got below the fog, and I could see it was not Chicago. I could see the piles—piers. I noticed the dock first, and then I saw the light; then I ran to the engine and said to the second, By God, this is not Chicago. It would take from one to two minutes to bring the propeller to halt, being
86 under check as she was. It may have been half a minute after I saw the pier, that I got the order to stop her; it was no less than that; it may have been a minute. I never went around only on this boat before by the Foxes. I had been this way on this boat two or three times. When I said on my cross-examination that I did not know what time it took to go from the Foxes to Racine, I meant I did not know the distance. I judged at the time it ought to take about twenty-four hours, at the rate we were going, to go from the Foxes to Racine. It would take her about 31 or 32 hours to go from the Foxes to Chicago. It is about 60 miles from Racine to Chicago. As she was going that night, it would take her six or seven hours to run from Racine to Chicago. I carried a watch at this time. I timed the events by my recollections. I generally keep a log; I have no log of these matters I have been testifying to to-day. I turned the set-screw after I looked out of the gangway, and saw the piers. I think I turned it myself; this was the first thing I did after looking out of the gangway.

Being again cross-examined by counsel for the libellant, the witness says:

The lights I thought were on a tug were 300 or 400 or 500 feet from us when I went down in the engine room. I did not watch it any further; I did not see it afterwards; did not watch it longer. When I first
87 went below, I took down this gangway and put my head out, and saw the dock, and saw a light. The pier told me it was not

Chicago. I did not look long enough at the light to judge about its being Chicago from that. From the time I went down till we struck, was not over two or three minutes. With the sea as it was and the boat under check as it was, we could stop the boat in going about her length. The boat is about 120 feet long. The lower we are in a boat, the further we can see in a fog; I could see twice as far down as low as the gangway as from the pilot-house; could see 200 or 300 feet from the gangway an object on the water.

Being again examined by counsel for the respondent, the witness says:

When I looked out from the gangway, the fog had not lifted any to my knowledge; when I opened the gangway, I looked right out on to the pier. The fog was not resting on the water. I could see the piles under the pier from the deck of the vessel. A person standing on the main deck could see these piles under the pier. The fog would prevent a person standing on the pilot-house from seeing the piles under the pier.

Being again cross-examined by counsel for the libellant, the witness says:

88 The captain was on the hurricane deck. There was no one on the main deck that I know of. A person on the main deck could see the piles under the pier better than one on the hurricane deck.

GEORGE HENDREY.

After being read over to the witness, subscribed to before me April 4th, 1867.

GEO. GORHAM,
Commissioner of the Circuit Court of the United States for the Second Circuit and Northern District of New York.

Endorsed: Filed April 11th, 1867.

WM. H. BRADLEY, *Clk.*

Depositions of Charles B. Sill, William Fitzpatrick, and Henry Joray, taken before George Gorham, a United States commissioner in the city of Buffalo and State of New York, on the 5th and 6th day of April, A. D. 1867, on behalf of the respondent.

Deposition of Charles B. Sill.

I was clerk on the propeller Portsmouth in October, 1866. I remember the circumstance of her running aground at Waukegan. I was on deck at the time she ran aground. I was on deck and off all night up to the time we ran on. I was back and forth from deck to cabin. During the hour before she ran ashore, it was very dark, and I should say foggy; could not tell it was so dark. I could not see over seventy-five feet; could not see land. The sea was rough, so rough

89 that we could not run in the trough of the sea, and as our course naturally in going down to Chicago along by Waukegan is to follow along the land, we had, in order to avoid getting in the trough of the sea, to run a litle aslant, first one way and then the other. When the vessel struck, the captain ordered me to go right ashore and go to the telegraph office, and telegraph immediately to Chicago for a tug. I went ashore to telegraph office, found a man, who said the office was shut and the operator would not be there till six o'clock, and he did not know where the operator boarded. I went up town and tried

to find him. In the meantime the engineer had come ashore to find the operator, and I think he found him. I went back, and saw the captain, and he told me to go to Chicago by first train and get a tug. I went on the train to Chicago, somewhere from half past four to six o'clock. I reached Chicago in about an hour. The captain told me to have the tug fetch down the strongest hawser they had, and if they did not have one for me to go and buy one. I got to Chicago, and went to tug office, and got a tug and hawser just as quick as I could, and I came back to Waukegan on the tug. Got back to Waukegan about two o'clock in the afternoon.

Being cross-examined by the counsel for the libellant, the witness said:

I had been clerk for three or four trips. It takes about two weeks to make a trip. I had never had any experience as a sailor before that.

90 Before this I had been in the army up to May, 1865. I know nothing more about sailing a propeller than what I had learned on this propeller. We left Chicago for Waukegan in the tug about eleven in the morning. I got the tug Wood. I forget her first name—the largest tug they had there. They had not thrown over anything before I left to go for a tug that I observed. They threw part of the cargo after I returned with the tug; some water-lime and some salt. Right away after we got there they went to throwing over salt and lime. Some was on deck and some under deck. The salt was taken aboard at Buffalo at the Salt Co. dock. Lime was taken aboard at Buffalo. I was on board when we turned around and went back. We turned about an hour or two hours before we ran aground. Could not tell the time exactly. We were not going so fast but that we could make out soundings all the time. I can't say for certain, but I think we had made soundings before we turned around; I don't remember that any were made before we turned around. I was on deck some of the time before we turned; I would come on and see if I could see a light and go back. I was on deck as much before as after we turned. I saw a light before we went aground. I saw a lighthouse light as I supposed. It was off on the land side and forward and to the left of the boat and in the same direction Chicago light would have been if we had been approaching Chicago after we turned around.

91 It seemed to be above the water ten or fifteen feet. I did not see the lighthouse afterwards. The lighthouse at Waukegan stands back from the shore, but where in particular I don't know. I did not hear any whistle before we ran ashore except our own whistle, which I think sounded three times before we ran aground. I did not see the lights of any tug before we ran aground. I was on deck at the time we ran aground. I was forward on the hurricane deck when we went on; I had been there about ten minutes or thereabouts from the time the engineer showed me the light. The engineer's name was George Hendrey. The engineer showed me the lighthouse light. I do not remember any other light appearing on shore besides the lighthouse light. I don't believe I saw the shore lights in houses till I got on shore. I remained on deck from the time the engineer showed me this light till the boat went aground. I think there was a fog at that time, so much so that you could see a little blur of the light. It was so very dark that I could hardly find the R. R. station. I left Waukegan just about daylight. I do not think the fog was quite so bad when I went off to Chicago; there was not enough to attract attention.

Being again examined by the counsel for respondent the witness says:

Q. When the engineer first showed you that light, what light did you suppose it to be?

92 (Objection.)

Ans. I supposed it to be Chicago lighthouse.

Q. What made you think that it was Chicago lighthouse light?

(Objection.)

Ans. Because it lay in the same direction that Chicago lighthouse would have been if we had passed it coming back that way, and because we could hear the cars passing along shore as they do in Chicago. I don't know any other reason. When I first saw the light I could not see any land or buildings.

Q. How was it with respect to darkness at the time you first saw the light?

(Objection.)

Ans. I should think it was just as dark as it had been. It looked darker than it did before I looked at the light. When I came back I found her tied up to the pier—bow tied to the pier—and her bow had been chafing on the pier; she lay pretty near at right angles with the pier, with her bow on the pier. I did not notice whether or not her stern was on some piles. The sea then was pretty heavy; not very rough—about middling. The tug rolled very much indeed. I think the propeller's stern had been driven in a little while I was gone. The tug came up and connected the hawser to the propeller and pulled on her, and we worked our own engine and tried to get her off; did not

93 succeed at first; she was loaded too heavy; she had settled in the sand so they could not pull her off. Next thing the captain ordered the men on the boat to throw over part of the cargo. Can't say how long we worked before we threw over cargo—it may have been an hour—we worked at it till a man from the tug came aboard and said it was no use, we had got to light her up by throwing over cargo. I do not remember seeing any cargo thrown over till after the man came from the tug and said so. While the cargo was being thrown over, the tug and our engineer were both working to get her off. I remember Captain Anderson, the agent of the insurance companies, going up on the tug with us.

Q. Did you hear Capt. Anderson give any directions at Waukegan in regard to the necessity of throwing over the cargo?

(Objection—Capt. Anderson's directions are incompetent so far as the libellant is concerned, and inadmissable in any point of view.)

Ans. I think he was the same man who came on the propeller from the tug, and said it was useless to try and move, and we must throw the cargo over. He was the man who talked insurance. So far as I observed, throwing the cargo over helped to get off the boat.

Q. Could the boat have been got off if she had not been lightered?

94 (Objection—That witness is not competent to express an opinion, and it is not a proper subject-matter for him to express an opinion on.)

Ans. I do not think she could have been got off. They did not succeed in moving her till they began to throw off the cargo. They got her off next morning about five o'clock. There was no tug at Waukegan. There is no harbor there, except what is formed by the pier.

Being again cross-examined by counsel for the libellant, the witness said:

There were no boats there. I did not notice some old piles at the stern of the boat; it looked as if there had been an old pier built out;

this was about daylight. While I was gone the propeller had worked in and towards the pier some ten feet or so; the sea had forced her stern in towards land, and rubbed the bow against the pier. I don't think the pier protected her from the sea. The wind had not died out; it was not calm nor very rough; the wind was blowing on shore. I first observed cargo being thrown off about an hour after the tug came. I was up till about nine p. m., and then turned in, and got up about five a. m., and they had just got her off. I know nothing of what was done from nine p. m. till five a. m. Before I turned in, they had, I think, thrown over the water-lime and marble dust, and begun at
95 the salt; can't say how much salt they had thrown over then. The stem stood out towards the lake when the tug began to pull. When the boat ran on, the stern stood about ten or twelve degrees from the pier, and the bow was then about ten feet from the pier, and the stern about 40 to 50 feet from the pier; and from the end of the pier to the nearest point on the boat was 20 to 25 feet.

Q. How was it when you returned with the tug?

Ans. She had swung around about right angles with the pier. We fastened the hawser to the bow of the propeller; the tug lay out in the lake from the end of the pier.

Q. Did that bring her stern in towards the piles forming the old pier?

Ans. No, sir; not till they lightened her. They had not moved her any when I went to bed.

Q. Was the stern near the piles forming the old pier before they had pulled the propeller around considerably?

Ans. From the time I went on her till I went to bed, they had not pulled her around hardly any. Yes; from five to ten feet before they had pulled her around any. When the boat first went on, the stern was between 50 and 200 feet from the old piles. When I returned with the tug, it was from 5 to 10 feet from them. I do not know how deep the water is there.

Q. Did you, before the propeller ran aground, hear any R. R. cars on the shore; if so, how long before?

96 Ans. Yes, sir; I heard them about four or five minutes before we ran ashore; they were going and coming there.

Q. Was the noise you heard the running of the cars or the blowing of a whistle?

Ans. I don't remember hearing any whistle, because we were whistling ourselves all the time. I heard the noise of the running of the cars, such as they usually make.

Q. Did you see the pier before the propeller ran aground?

Ans. No, sir.

Being again examined by counsel for respondent, witness says:

The old piles I speak of were out of the water. I did not make any examination to see how far they were away; did not notice them particularly anyway; do not pretend to speak with accuracy. I don't know particularly where I was standing when I noticed them.

Being again cross-examined by counsel for libellant, witness says:

I left the propeller the return trip; since then I have been in a drug store, and also in a law office.

CHARLES B. SILL.

97 After being read over to the said Charles B. Sill, subscribed by him in my presence.

GEO. GORHAM,
United States Commissioner for the Second Circuit and Northern District of New York.

And the respondent also called William Fitzpatrick as a witness in his behalf.

And the said William Fitzpatrick being about the age of forty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said William Fitzpatrick, and he did thereupon depose, testify, and say, as follows, viz:

I reside in Buffalo; I am sailing; have been on the lakes for twenty years; had not been a seaman before I went on the lakes; I have been deck-hand, watchman, wheelsman, second mate, and mate; I first acted as second mate some nine or ten years ago; I had been first mate for about two months and a half before this occurrence; I had been on steam vessels all the time; I was first mate of propeller Portsmouth when she ran aground at Waukegan, in October, 1866; we were on a voyage from Buffalo to Chicago; we had a cargo of salt, water-lime, plaster, some fish, and a little glass, principally salt, water-lime,
98 and plaster; water-lime and plaster were stowed on deck; the salt was in the hold; the Portsmouth had a main deck and a promenade and a hurricane deck.

Q. Which was the proper place for a look-out?

(Objection.)

Ans. Promenade deck. The main deck is closed in and is full of freight; the captain was Steele; I was first mate; James Coleman was second mate, and Sill was clerk. I guess there were eight deck-hands. Our regular route was from the Foxes; we wooded there; I was familiar with the rout from the Foxes to Chicago. On this trip we left the Foxes about six in the evening; it may have been nearer five; I know it was before my watch, and that begun at six. It was our intention to go direct to Chicago; at the rate we were going we ought to have reached Chicago in 27 or 28 hours, or thereabouts; the wind was on our starboard quarter; it was fair enough to carry a foresail; the wind was blowing pretty heavy about northwest after we left the Foxes; there was a good lump of a sea and a pretty thick fog; I could not tell as accurately how fast we were going as I could if there had been no sea on; in a smooth sea we usually go about nine miles; I remember when we arrived at what I supposed was Racine; that was about six the following evening; we supposed it was, because in the course we steered
99 that was the first point we make; we saw land and a steeple and a sort of village; we supposed it was Racine; the fog was just about the same—pretty thick; Racine is about 35 miles from Chicago; I was on deck all the time from the time we passed Racine till we ran ashore at Waukegan; the captain was on deck most of the time; he was there in the after part of the night; my watch came on at six, and the captain came up on deck about eight and remained till she struck, unless he went in the cabin to light his pipe; the capt's watch begun at one o'clock, and mine ceased at one; I expected to get into Chicago and did not think it worth while to turn in, and it was so foggy and dark I thought I would not turn in any how; I remember turning around after getting, as I supposed, past Chicago; the capt. and I talked something about it; when we turned I supposed we must be by

Chicago; had no other way of telling where we were except the time we had run; could not see the land, because it was thick and foggy; after we turned, we steered west for the land; I can't tell how long it was from the time we turned till we ran ashore; it was not my watch, and I did not take notice of time; after we turned till we ran aground, the capt., second mate, engineer, and I were all on deck; we were all on look-out; part of the time I was heaving the lead, and when
100 I was not doing so I was up in the rigging, and the second mate was heaving the lead; these men were all on the promenade deck; I did not see the captain in the pilot-house; he might have been; to ring the bells the capt. had to be up above the pilot-house; the capt. was on the promenade deck, and I was sounding, and I called out bottom seven fathom, and he said, All right, I know now where I am, and then he went on the pilot-house; this was the first time I had struck bottom with the lead; we were heaving lead mostly all night; heaved it right along from one o'clock; after the capt. went on the pilot-house I kept heaving the lead, and the water got shoaling, and the capt. sung out to the man at the wheel to port his wheel; I can't say whether the capt. checked her after he got on the pilot-house or not; but she was under good headway when I struck bottom with the lead; I don't know that she had full head of steam on; I did not know of her being checked till she was stopped and backed; she might have been without my knowing it; after the order was given to port the wheel, the capt. ordered her to be steadied, and we ran a little while till we saw some lights; I could not tell what the lights were; we saw one big white which we supposed was the Chicago lighthouse light, and then we saw one smaller light on the starboard hand; the big light bore nearly dead ahead;
101 we supposed the small light was that on the chimney which is over the reservoir at Chicago; the light was considerable high; they bore just as the Chicago lights would bear running in the same way; they looked just exactly like Chicago lights; we thought they were Chicago lights because of their distance apart, and one being bigger than the other.

Q. Did you have any consultation with the captain as to whether these were the Chicago lights or not?

(Objection as leading.)

Ans. I had not. When I first saw the lights I could not see the land or the pier. After we saw the lights and ran close enough to the lights, the captain was on the pilot-house and gave orders to the wheelsman and men to take the boat into the port. We did not whistle after the capt. went on the pilot-house. We were whistling all the while up to that time. I heard a whistle from towards shore, but I did not know whether it was a tug or locomotive; heard the sound or rolling cars after we heard the whistle. After this I was standing as far forward on the promenade deck as I could, looking close down towards the water. The second mate was standing by me, and we saw some object in the water. We got a little closer to it and saw it was a spring-pile pier. I sung out to the captain, who was on the pilot-house, to stop and back
102 her. I told him it was not Chicago, because it was a pile pier, for Chicago is a solid pier. He stopped and backed her as soon as I told him. We were looking some time before I saw it; might have been ten or 15 minutes. This was the best point on the boat for a look-out. It was thick and foggy weather. We could not see far. I don't think I could see more than 250 feet off. He backed her, and the capt. sung out to me to throw a lead over to see if we were going astern. I think I threw the line over, and sung out that she was not. I told him to

keep backing her, for she was swinging all the time. He said that was no use, that she was aground. Her bows were fifty feet or over from the pier. We gave the pier a wide berth to get in. The pier was along parallel with us, and on our starboard hand. We were 50 feet or so from the pier. Our bows were 35 or 40 feet inside the end of the pier. The capt. said we could do nothing without a tug. Our bows were aground and the stern in deep water, and the sea came in and worked us over on the beach. The wind and sea worked the boat's bow around so that it headed to the pier and the stern on the beach on the port side. We ran a line to the pier and worked our engine, and that brought our bows up to the pier. The object of doing this was to run her bows outside the end of the pier, and so off into the lake. The first thing we did

103 was to lower a boat and put the clerk ashore to get a tug. The next thing was to run a line to the pier. Then we got part of the men heaving on the line. Then we worked our engine. There were two or three of the men aft throwing the freight off. I think it was plaster. It was part of the deck load. We worked her almost to the end of the pier. Threw off some of the cargo to lighten the stern. There was more water under the bows than under the stern, and we thought by lightening her stern we could get her off. As we got her almost to the end of the pier the line parted, and the sea and wind put her back again. We got another line out and did the same with her; this one broke also. Then we got a line from the shore—a larger one. That line also parted as we got her up close to the end of the pier. We got another line out and tried that, and parted it. Then we had no more lines, and we had to keep quiet till the tug came. So we lay with the bows rubbing up against the dock; the stern being fast on. We were working the engine when we had the line out. I saw the shape of an old pier; it was piles sticking up in the water. They were on the port quarter. There was danger of our drifting on them. The tug came about four in the afternoon. The tug came and put a hawser out and pulled on us. Capt. Anderson, an insurance man, came down with

104 the tug. After the tug began to pull—(counsel here objects to what Capt. Anderson said)—Capt. Anderson sung out and said, Capt. Steele, if you want to light her off, now is your time while the tug is pulling on her. Capt. Steele ordered me to take men down below and throw deck load overboard. I did so. As fast as we were throwing off the tug was pulling, and the propeller was coming around. We threw off all on deck, and commenced to take out the after hold as ordered by the Capt. Steele. After we got the deck load off, her bows were outside of the pier in deep water, and the stern was fast. Then taking cargo out of her aft would leave her clear there, and we could shoot out all right. The effect of throwing off the deck load was to lighten her up. The effect of throwing out the cargo from the hold was to lighten the vessel. We stopped throwing out the cargo before she got quite afloat. The tug was at work at her all this time, and our own engine was working when it was necessary. The tug had been working at the vessel but a few minutes before we began to lighten her up. The boat did not move any before we began to lighten her. There was no way of getting the cargo on to the pier while we were lightening her. I don't think there was any more of the cargo thrown overboard than was necessary to get her off.

Q In your judgment was every care taken that could be, under the circumstances, in ascertaining the location of your vessel and in approaching the port?

(Objection.)

105 Ans. Yes; so far as I know or understood. All the salt which we

took in at Buffalo, and which was not thrown over, was delivered at Chicag. Some of the barrels were damaged in getting in and out of the hold, but none was damaged by the water.

Being cross-examined by counsel for the libellant, the witness says:

As the wind and sea was, I think the vessel would go slower than in smooth water. I could not exactly tell how far it is from the Foxes to Racine. I would not give any guess at it. When we made the land we thought was Racine, I suppose we were 5 or 8 or 10 miles out from land. I could not tell what time it was. It was some time late in the afternoon and before dark. The fog was then about the same it had been during the day. I was on deck when we passed Racine, but it was not my watch. My watch began at 6 p. m. I could not tell how long after we passed Racine that I took my watch. I can't give any idea of the length of time. I can't tell whether it was one hour or three hours or four hours. I don't remember whether I turned in again after we passed Racine, and before my watch or not. I don't remember whether I remained on deck or not. Took my watch at six. One of the wheelsmen was in my watch—the watchman whose name I don't remember.

106 Q. Who constituted your watch at six o'clock that night?

Ans. The man at the wheel—whichever one it was—I can't say which; that is all.

Q. How long did your watch last?

Ans. My watch lasted till one o'clock.

Q. During that time was there any other person in your watch?

Ans. Yes, sir.

Q. Who?

Ans. Captain.

Q. Who else?

Ans. Engineer was up there on my watch.

Q. Who else?

Ans. That's all, unless the wheelsman changed.

Q. What time did the captain come on watch?

Ans. Somewhere about 8 o'clock as near as I can judge.

Q. How long did he remain there?

Ans. Till four o'clock next morning.

Q. When did he take command of the vessel that night?

Ans. The capt. came on deck about 8 p. m., and a little while afterwards he gave orders to the man at the wheel to starboard his wheel. The captain has command of the vessel all the time. He took charges of the vessel a few minutes after he came on deck.

Q. Did you give any orders after the captain came on deck?

107 Ans. I had been standing forward on deck and looking out forward; I told the captain that was land ahead or looked like it. I gave no orders any further than that after the captain came up. Yes, I gave lots of orders in telling men to get lines ready.

Q. What land did you see and what time was it that you saw it?

Ans. I did not know what land it was, supposed it was land above Racine. It was so thick and foggy could not tell what land it was. It was about nine o'clock in the evening; it was a little while after the captain came on deck.

Q. When did you give lots of orders in telling men to get lines ready?

Ans. It was somewhere about ten or fifteen minutes before four o'clock next morning.

Q. Are those the only orders you gave after the capt. came on deck?

Ans. I may have given some orders not to amount to anything.

Q. What did you do from the time the captain came on deck till four o'clock next morning?

Ans. I walked the deck the biggest part of the time with the captain; heaved the lead to see if I could find any bottom; went up in the rigging to the mast-head to see if I could see a vessel ahead or a light or anything; called 2nd mate, at one o'clock, I think; I went and had a lunch; then came on deck; kept a look-out forward; I gave 2nd mate a
108 hand to heave the lead; when I was not doing that I was up in rigging looking for a light; kept on doing so till we stopped at Waukegan?

Q. Was your boat under check any of the time till you turned around?

Ans. I don't know whether she was or not; I believe she was not; I did not check her and I don't know that any one else did.

Q. Did the capt. go up to ring the bell before you turned around?

Ans. I don't know whether he did or not.

Q. Could he have done it while you were on deck without your knowing it?

Ans. He might have done so while I was up in the rigging. He could not have done so very well while I was on the deck unless I knew it.

Q. How much of the time were you at the mast-head?

Ans. I was there about half the time after the 2nd mate came on deck.

Q. Were you at the mast-head before the 2nd mate came on deck?

Ans. I was, but did not keep count of them to tell how many times.

Q. Did you know the captain was going to turn the propeller around before he commenced to do it?

Ans. I did.

Q. How did you know it?

Ans. He told me.

Q. How long before?

109 Ans. May be a half minute and may be two minutes.

Q. Did you before this suppose that you had passed Chicago?

Ans. I did.

Q. Why did you not mention it?

Ans. We were talking about it.

Q. Who?

Ans. I was and capt. and 2nd mate and engineer.

Q. Who first spoke on that subject?

Ans. Can't say who first spoke of it.

Q. Had the subject of having gone by Chicago been spoken of by any one before you made up your mind that you had gone by Chicago?

Ans. Of course, it had.

Q. Who spoke of it first?

Ans. Don't recollect who spoke of it first.

Q. How far by did you make up your mind you had passed Chicago before you turned about?

Ans. We could not tell whether we were far or near. We supposed we were toward or above it.

Q. Why did you turn around and go back?

Ans. At the time we supposed we had run far enough to make Chicago, we turned the boat around and steered west right straight for land. We kept the lead agoing and I was in the rigging, and I sung out to the capt. there was land close on our port bow; capt. sung out to the man at the wheel to port his wheel, then he steadied her, run a few minutes that way and then saw the light. That's all.

110 Q. How far was the light from you when you first saw it?

Ans. I could not tell you, sir.

Q. How did the light bear from you?

Ans. I did not look, sir, how it did bear.

Q. Were you in the rigging when you made the light?

Ans. I was in the rigging when I saw one of them; I don't know as I was when I saw the two.

Q. Which light was it you saw when you were in the rigging?

Ans. It was the bigger of the two lights.

Q. Can you tell which way the big light bore from you?

Ans. I could not say; I did not look to see. It was pretty near dead ahead.

Q. How long did you stay in the rigging after you made the light?

Ans. May be five minutes.

Q. Did you see the small light before you came down from the rigging?

Ans. I do not think I did.

Q. How long after you came down from the rigging was it before you saw the small light?

Ans. I can't tell about how long.

Q. Was it over or under five minutes?

Ans. I don't know, sir; I had no watch to look at.

Q. Can you give any idea of the time?

Ans. It may be five minutes it may be two minutes; may be longer; may be not so long.

Q. What did you do after you came down from the rigging on deck before you made the smaller light?

111 Ans. I went up forward and looked out ahead.

Q. Did you give any orders to the men to get the ropes ready before you saw the smaller light?

Ans. Not that I know of just yet.

Q. How did the smaller light bear from the propeller?

Ans. On the starboard hand.

Q. How much?

Ans. May be 2 or 2½ points; may be more; I did not look.

Q. How did the big light bear when you made the smaller one?

Ans. May be half a point on our starboard; may be more and may be not so much.

Q. Where was the capt. when you first made the small light?

Ans. On the pilot-house, where they ring the bells.

Q. What was the next thing you did?

Ans. I told another man to tell the men to get the lines ready.

Q. Did the men get the lines ready?

Ans. They were getting them ready.

Q. How long were they about it after you sent the order?

Ans. May be five minutes, may be more.

Q. Then what?

Ans. I stoood forward on deck, and I and the engineer & 2nd mate discovered the pier and sung out to the capt. Told him it was a pile pier and to stop and back.

Q. How did your vessel stand with reference to this pier when you first discovered it?

112 Ans. We were almost straight up and down with the pier, giving it a good berth of 40 or 50 feet. We were, I mean, running parallel with it.

Q. Why were you giving it a good berth?

Ans. Well, we supposed it was Chicago pier, and we have to give Chicago pier a good berth or else we would get ashore.

Q. Was that the reason you gave this pier such a berth at this time?

Ans. Yes, sir.

Q. How do you know that that is the reason?

Ans. I know that is the general distance to keep away fron Chicago pier.

Q. Where is the Waukegan light?

Ans. The light we saw was morth of the pier. It is up on the land in the village and none on the pier.

Q. Did you ever see any lighthouse at Waukegan at any time?

Ans. I did.

Q. When?

Ans. I saw it several times last summer.

Q. Where is it located?

Ans. It is upon a point of land in the village.

Q. Is it north or south of where the pier starts out from the land?

Ans. North.

Q. About how far north from the base of the pier?

Ans. I don't know; have no idea of it.

Q. Where was the smaller light?

113 Ans. I don't know; but I supposed it was in the lake when I first saw it.

Q. Did you hear any cars before you discovered the smaller light?

Ans. No.

Q. How long after you discovered the smaller light was it that you heard the cars?

Ans. It was only a little while; may be ten minutes; may be not so much; may be eight minutes.

Q. How long did you hear the cars before you struck?

Ans. It was only a little while; it may be ten minutes; it may be more.

Q. Did you feel your boat strike?

Ans. I did not. I did not see the old piles before we struck. I first saw them as soon as we got straightened around and the panic over.

Q. What was the first thing that satisfied you that the place you were entering was not Chicago?

Ans. I saw the sea washing under the pier, and then I knew it was not Chicago.

Q. Was that before or after your heard the cars?

Ans. After.

Q. How long after?

Ans. I could not say how long; may be five minutes; may be more; may be not so long. It was a short time.

Q. What kind of lights were these two you saw?

Ans. They were bright lights, and I saw no others.

Q. Were there any other lights visible?

Ans. I saw the R. R. cars' light going toward Chicago.

Q. When was that?

114 Ans. A little minute before we struck.

Q. Did you see the locomotive or sparks from it?

Ans. Neither.

Q. What lights then did you see?

Ans. I suppose what I saw was the head-light of the locomotive. This was the only one on the cars I saw.

Q. When did you first throw over any cargo?

Ans. A little while after we ran on—about break of day.

Q. Where did you take it from first?

Ans. From the after part of the deck.

Q. How much did you throw off then?

Ans. I could not tell. Can't give any idea. We continued till the lines gave way, and we discontinued. We may have been an hour or half an hour.

Q. Did you throw over any more after that till the tug came?

Ans. I guess not.

Q. When did you throw over any more first?

Ans. After the tug caught hold and was pulling on us.

Q. When was the last thrown over?

Ans. It may be about three o'clock in the next morning.

Q. Did you keep throwing off all the while after the tug came till three o'clock next morning?

Ans. Yes, sir.

Q. Could you not have got out this freight from the bow of the boat on to the pier?

Ans. No.

Q. Why?

115 Ans. Because we could not get a gangway.

Q. Could you not have mad a hole up through the promenade deck, and got it out so?

Ans. We might have made a hole in the deck; but then we could not have got the cargo on the dock.

Q. Why not?

Ans. We had nothing to reach the pier so we could get it on the dock. It wanted a gang-plank or something to roll the barrels over which would be long enough.

Q. Did not the bow of the boat chafe the pier?

Ans. Yes, sir.

What was the difficulty in getting a plank to reach from the bow on to the pier?

Ans. There was no difficulty in reaching a plank from the bow on to the pier; but you could not work with it there.

Q. Why?

Ans. Because the vessel's bow was right against the dock, and then if you had cut a hole in her bow the plank would not lay on the dock, because it would be laying sideways and to make it work we'd have to cut the vessel's stem off to her main deck.

Q. Did you try to see whether you could do this?

Ans. We did not try to do it. We talked about it. We talked about getting a lighter to light it off.

Q. Why did you not get a lighter?

Ans. There was none there.

116 Q. Did you and the capt. talk about getting the freight out on the dock?

Ans. No.

Q. If you had removed the bulwark on the starboard bow, could you not have rolled the barrels out on the pier?

Ans. No; we could not.

Q. Why?

Ans. Because we had nothing to reach the dock. It would have been 40 or 50 feet from the pier when done.

Being again examined by the counsel for the respondent, he says:

A big dead sea was rolling after the tug came and while we were getting out cargo. The rolling of the sea made it more difficult to get the cargo out on the dock. I don't know that the rolling of the sea would have made any difference if we had had planks 100 feet long The longest gang-plank is 12 feet. If we had cut a hole it would not have helped us any, for the deck load would then have gone into the hold. If we had cut a hole in the promenade deck and got the cargo up on that deck, it would want a gang-plank 100 feet long to reach the pier so it would work. The boat was so low and the pier so high that we could not get the cargo out that way. If we had cut the bulwarks on the star-
117 board side, the sea would have come in and damaged the vessel. The starboard side was nearest the dock. If we could have got a gang-plank to the pier, with our crew we could not have got out more than 100 barrels an hour, and we should have had to cut the boat all up to do it any way. It was necessary to get her off as speedily as possible, as she was pounding very heavily.

Q. Even if you could have got the cargo on to the dock would it have been safe for the vessel to have taken the time to do it?

Ans. It was not safe to stop a minute longer than we could help. She was in danger every minute. I can't say how long the wheelsman and I were alone in the watch after my watch begun. We were alone till the capt. came out. It was late in the afternoon when we thought we saw Racine. We left some salt at the Foxes. I was wrong in saying we delivered at Chicago all that we took on board at Buffalo except what we threw over.

WILLIAM FITZPATRICK.

After being read over to the witness, William Fitzgerald, subscribed before me.

GEO. GORHAM,
Commissioner of the United States Circuit for the Seventh Circuit & Northern District of N. Y.

118 The further examination of witnesses was adjorned till nine o'clock in the morning of the sixth of April, 1867.

And on the sixth day of April, 1867, I was attended by the counsel for the libellant and respondent, and the respondent called as a witness in his behalf Charles B. Sill, who having been already cautioned and sworn in this cause, testified as follows:

We took on cargo at Buffalo for Chicago, but we delivered some salt at Fox island.

Q. How did that happen?

Ans. I can't say for certain whether they spoke to us at the Foxes when we were coming down to Buffalo on the trip before, about bringing them some salt on our return trip. I think they did. Then on the trip back to Chicago, during which this accident happened, when we stopped at the Foxes, the captain told the man (Roe) at the Foxes that he would let him have fifty barrels of salt at the retail price in Chicago. We left fifty barrels of salt at the Foxes. All the salt put on board at Buffalo was carried to Chicago, except what was sold at the Foxes or thrown over at Waukegan. I do not know of my own knowledge
119 that the capt. paid Comstock at Chicago for the salt left at the Foxes.

Being cross-examined by the counsel for the libellant, the witness says:

I saw the salt taken off at Fox island. I can't say for certain that I counted the barrels; I think I did—I am almost sure I did. I can't tell whether I tallied it off the boat. I am able now to speak of the number of barrels from recollection. They were piled up on the wharf. Come to think, I am sure I counted them.

Q. Did you collect the freight on these fifty barrels all the way to Chicago?

(Counsel for respondent objects as being immaterial to this action.)

Ans. I don't think I did; because at Chicago I counted the barrels & went to the office & got a ticket from the foreman of the salt dock of the number of barrels delivered, & collected freight by that ticket. That is as near as I can recollect. Capt. Steele, I think, attended to the getting the freight on the fifty barrels left at Fox island. I do not recollect the exact number of barrels delivered at Chicago. I can tell within 25. About 840 bbls. I don't know how many barrels I collected freight on at Chicago.

CHARLES B. SILL.

120 Being read over to the witness, Charles B. Sill, the same was subscribed by him before me.

GEO. GORHAM,
United States Commissioner for the Seventh Circuit & Northern District of New York.

And the respondent then called as a witness on his behalf Henry Joray; and the said Henry Joray being about the age of thirty-nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Henry Joray, and he did thereupon depose, testify, and say as follows, viz:

I was second engineer of the propeller Portsmouth when she ran aground at Waukegan, in October, 1866. Her engine was in good working order at that time. I was on watch, standing by and attending to her engine. I had been on watch for three hours before we ran aground. I heard the bell which rung to stop; I immediately stopped the machine; after she was stopped, the captain rung the backing bell, and then the first engineer took hold of the throttle & worked the engine to back her; the engine worked all right.

121 Being cross examined by counsel for libellant, the witness says:

When I got the bell to stop, the engine was under way; she was going along as she generally used to—full speed; when under full speed she runs 8½ to 9 miles an hour; she had been running in that way probably ten minutes; it may have been twenty minutes for all I know; I don't recollect right; I was in charge of the engine when we turned the boat around; this was all of an hour and a half, any way, before I got the bell to stop; during all that hour and a half she had been running, I can't tell how fast, probably 8½ to 9 miles an hour when she was running; but she was checked several times during that time; I remember I kept up a good head of steam to be ready to manage her if anything happened.

Q. Was the first engineer in the engine room when the bell rung to stop?

Ans. He was just outside of the engine room, probably three feet from the engine room; I stood with my hand on the lever ready to stop her, as Hendrey had told me we were going into Chicago.

Q. How long had the engineer been there before you got the bell to stop?

Ans. Not over three minutes.

Q. Do you know where he had been before that?

Ans. Yes, sir; he was up on deck.

122 Q. How long had he been up there?

Ans. He was up there, I should think, about 15 or 20 minutes.

Q. Had you seen any light before you got the bell to stop?

Ans. No, sir; I did not.

Q. How long have you been engineer?

Nine or ten years; had been on the Portsmouth some two months.

Q. Previous to getting the bell to stop, had you been looking out; and, if so, what had you seen?

Ans. I had been—probably a minute or two before the stop-bell rung. I was looking to see if I could see some light, and could not see any.

Q. What were you looking out for & what did you see?

Ans. Mr. Hendrey came down stairs, and I asked him where was the light, & he said we were running in the other way, having been past Chicago. I had been looking out of the starboard side, and could see no light. I looked out the starboard side to see if I could see Chicago light, and I could not see any light. Then I looked on the port side, and I saw some lights on shore of a train going up & one coming down. There were conductors with globe lights, and I then made up my mind it was Chicago. This was before the engine was stopped. I did not see any other lights except the floating lights.

123 Q. Were these two trains you saw meeting each other; and, if so, how far apart were they?

Ans. They were just passing each other when I saw them. I hardly looked out a second at a time.

Q. Are there gas-lights on the dock at Chicago?

Ans. There are gas-lights all along on Michigan avenue, which you can see out in the lake, especially if it is dark, except when it is foggy.

Q. Did you see any gas-lights when you looked out?

Ans. No, sir.

Q. How far are the Michigan avenue gas-lights from the railroad tracks?

Ans. About a rod.

Q. Could you have seen a gas-light as far as you could a globe light that night?

Ans. Yes, sir. When I saw the globe lamps I took them for the gas-lights, & so it confirmed me in thinking it was Chicago.

Q. Were the lamps you saw moving?

Ans. I could not tell whether they were or not; I did not look long enough.

Q. Were these lights on the two trains you saw passing each other?

Ans. I don't know whether they were passing each other.

Q. You testified above that you saw two trains meeting & passing each other. Is that true?

Ans. It was the truth afterwards as I was told so; but I did not know it when I first looked out.

Q. You swore above that there were conductors with globe

124 lamps. Is that true?

Ans. I don't know whether they were conductors. I presume

they were some men who had the globe lamps. I could see the lamps, and that is all. It was too dark.

Q. Did you see globe lamps on the shore?

Ans. Yes, sir.

Q. How many?

Ans. Could not tell how many; I saw them, & that is all. I did not look out long enough to count them.

Q. Were the globe lamps you saw under motion?

Ans. I have not looked out long enough to tell anything about it.

Q. Which could you see the furthest that night, a globe lamp or a street gas-light?

(Objection on ground that it is not a question for an expect; &, if it is, the witness is not competent to answer it.)

Ans. To my knowledge I could see the gas-light further than the globe lamp; but I did not see any gas-light that night, and I don't know anything about it. I think a gas-light would show out better than a globe light any time.

Q. Are there gas-lights at Chicago visible from the lake on both sides of the entrance to the harbor?

Ans. They are visible on the south shore very well, but on the north shore they are not as visible; you don't see them very well.

125 Q. When you are approaching the entrance to the Chicago harbor in the night, can you not occasionally see rows of gas-lights in the streets?

Ans. No, sir; not very well; so many bushes & trees at the foot of the streets you can't see them.

Q. On such a night as that was, if the streets of Chicago were lighted by gas, would there not be a reflection over the city?

Ans. I can't answer on that question.

Being again examined by counsel for respondent, the witness says:

I learned the lights I saw were globe lights after we got ashore. I learned first that they were globe lights and in motion a half an hour or so after we struck. I think Geo. Hendrey told me so in the first place.

Q. When you first saw them, did you see them long enough to tell whether they were globe or gas lights?

Ans. No, sir; I could not tell.

Q. When you first saw them, what kind of lights did you suppose them to be?

Ans. I did not look out long enough to know anything about them.

Being again cross-examined by counsel for the libellant, under the objection of the counsel for the respondent that the re-direct examination was direct only to matter elicited upon the cross-examination:

126 Q. If the lights which you saw had been gas-lights at Chicago, would they not have extended farther, & been more numerous?

(Objection that the question is an absurd one on its face, and does not call for any fact, because the lights the witness saw could not extend any further, or be more numerous than they were.)

Ans. I am not going to answer that question. I have told you already about it, and I ain't going to tell any more about it. I tell you I did not look out long enough to see.

Q. Did you not conclude that they were globe lights instead of gas-lights, because they did not extend farther on the shore, and were so few in number?

Ans. No, sir. I know nothing about it. I was on watch, doing my duty, and I had no time to tell whether they were gas or globe lights.

Q. How many lights do you now recollect to have seen?
Ans. I can't tell.
Q. Do you now recollect that you saw any?
Ans. Yes, sir; I do.
Q. Did you see more than one?
Ans. Yes, sir.
Q. Did you see more than two?
Ans. Yes, sir.
Q. Did you see more than three?
Ans. Yes, I suppose I did. I saw a number of the lights, but I don't know how many there were.
Q. How near together were they?
127 Ans. I could not tell you. I did not look out long enough.

HENRI JORAY.

After being read over to the said witness, Henry Joray, subscribed by him before me.

GEORGE GORHAM,
Commissioner of the Circuit Court of the United States for the Seventh Circuit and Northern District of New York.

Endorsed: Filed April 11th, 1867.

WM. H. BRADLEY, *Clk.*

Deposition of David D. Parmalee and Melancthon H. Wright, taken before Francis E. Clarke, a notary public at Waukegan, in the State of Illinois, on the 17th day of June, A. D. 1868, on behalf of the respondent.

David D. Parmalee, a witness of lawful age, being produced, sworn and examined on the part of the respondent, to the questions propounded to him deposes and says as follows, to wit:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Answer. My name is David D. Parmalee; my age is thirty-seven years; my occupation is fishing on the lake; and I reside at Waukegan, Illinois.

Interrogatory 2nd. How long have you resided at Waukegan?

Answer. Thirteen years.

Interrogatory 3rd. Have you ever been a seaman; and, if so,
128 how long have you sailed?

Answer. I have; I have sailed between sixteen and seventeen years.

Interrogatory 4th. Did you see the propeller Portsmouth when she was ashore here, in the fall of 1866?

Answer. I did.

Interrogatory 5th. What time did she get ashore, and when did you first see her?

Answer. I could not state the exact time; I think she got ashore about four in the morning; I first saw her about five in the morning.

Interrogatory 6th. What kind of a morning was it, and how was the wind, and was there any swell?

Answer. The wind was from the northeast; there was a pretty good swell on in the morning, and increased.

Interrogatory 7th. Could the cargo of the propeller Portsmouth have been taken off in any manner to have saved it during the day, with the means and the materials then and there?

Answer. It could not, unless after four o'clock in the afternoon.

Interrogatory 8th. What time did the tug arrive here from Chicago?

Answer. Sometime about three o'clock; I don't know—it was late in the afternoon.

Interrrogatory 9th. Did you notice, during the day, whether the propeller was rolling or not?

Answer. She was rolling.

Interrogatory 10th. Was she rolling considerably?

Answer. She was.

Interrogatory 11th. Could the tug have lighted her, in your opinion?

129 Answer. Not in the way she was. It could not get side of her; they tried to do so.

Interrogatory 12th. Could the cargo have been taken off by a raft, if the material could have been got for one?

Answer. Not unless it had been done in the evening; it could not have been done during the day.

Interrogatory 13th. Could it have been taken off by the fishing smacks, lashed together.

Answer. Not till after four or five o'clock in the afternoon.

Interrogatory 14th. In your opinion, did the master of the vessel act seaman-like under the circumstances? Could he have done anything else than what he did do in the emergency?

Answer. He acted seaman-like; I think that he could have done no more than he did do.

Interrogatory 15th. What would have been the effect upon the vessel, being aground with a heavy cargo, and remaining aground, with a heavy sea, any length of time?

Answer. It would be apt to set her leaking.

Interrogatory 16th. Was it not necessary and proper for the salvation of the vessel and part of the cargo to lighten her as soon as possible?

Answer. I think it was; we always practice it on such occasions.

Cross-examination by Mr. Jackson:

Interrrogatory 1st. Does the period of sixteen or seventeen years, during which you were a seaman, embrace the time of your

130 residence here as a fisherman?

Answer. It does not.

Interrogatory 2nd. What was your age when you first commenced following the sea?

Answer. My father died when I was an infant, and I commenced following the sea when I was very young. I cannot tell my exact age, or the exact year when I commenced.

Interrogatory 3rd. You have stated that a part of the cargo could have been saved after four o'clock. Please now state in what manner it could have been saved, and also the amount.

(Objected to as misleading witness.)

Answer. I mean to be understood that the sea began to go down after four o'clock, and if anything could have been saved it would have been after that time. It could not then, unless there had been material for doing so.

Interrogatory 4th. What kind of material was requisite?

Answer. Boats sufficient to carry the cargo.

Interrogatory 5th. What attempts did the captain or the crew make to save the cargo, as far as you saw?

Answer. Not any, that I saw, further than to get the vessel off.

Interrogatory 6th. Did you make any attempt to save any portion of the cargo?

Answer. I did try to save some of the salt after six o'clock.

Interrogatory 7th. Did you not before six o'clock?

I could not state exactly; it was about dark; don't know exact time.

Interrogatory 8th. Did you not before four o'clock?

131 Answer. I did not.

Interrogatory 9th. Was it not dark shortly after four o'clock at the time of year the propeller came ashore?

Answer. I was not dark at four o'clock at that time.

Interrogatory 10th. Was it dark at half past four?

Answer. I would not say that it was or was not; my impression is that it was not.

Interrogatory 11th. Did you succeed in saving any portion of the cargo?

Answer. I did.

Interrogatory 12th. How did you take it—from the vessel or from the quantity piled up above the water, or from both places?

Answer. I took it from the pile in the water, most of it being in the water?

Interrogatory 13th. Did the swell prevent you from making trips to and from the propeller with your boat?

Answer. We made the trip, but took in some water in doing it.

Interrogatory 14th. Yet the water did not prevent you, did it?

Answer. It did not.

Interrogatory 15th. How many barrels did you you save either of lime or of salt?

Answer. Nine barrels of lime and sixty-seven of salt; they were not all full of salt.

Interrogatory 16th. Do you know whether any more barrels either of salt or of lime were saved by any persons at that time?

Answer. I do not.

Interrogatory 17th. How many persons were engaged with you in removing the salt and lime?

132 Answer. Eight.

Interrogatory 18th. How was the salt and lime devided after it was brought upon shore?

Answer. I had seventeen barrels of it, and the others devided the rest among themselves.

Interrogatory 19th. What was the names of those others?

Answer. Hadley, Long, John Dugan, McGinty, McGinley, John Dugan's boy, another Dugan.

Interrogatory 20th. How many boats were employed in removing the salt and lime?

Answer. Only one.

Interrogatory 21st. Whose was that?

Answer. It was mine.

Interrogatory 22nd. What was the largest number of barrels carried on your boat in any one trip?

Answer. Four.

Interrogatory 23rd. What is the greatest number of trips you made an hour, as near as you can tell?

Answer. I cannot tell; we were there from evening till half past two o'clock.

Interrogatory 24th. Do you not know whether John Cottenbury saved any of the lime or cargo from the propeller?

Answer. I do not, further than this: We pulled up some empty barrels the next day, and in some of these barrels contained from one to three quarts of salt, and others were perfectly clean; and this salt was all the salt that Cottenbury got, so far as I know.

Interrogatory 24th. Did you go upon the propeller at any time during the day that she was ashore; and, if so, when?

133 Answer. I was on the propeller, but cannot say when she worked her bow up on to the pier, and I went aboard of her.

Interrogatory 25th. Was it not in the morning?

Answer. No, sir.

Interrogatory 26th. Did you or did you not make an offer to the captain of the propeller, that for certain reward you would construct a scaffold from the boat to the pier by which the cargo could have been removed?

Answer. I did not.

Interrogatory 27th. Did you not offer to build a raft?

Answer. I did not.

Interrogatory 28th. Did not the captain decline your proposition, and answer in substance as follows, that he was bent in getting off in the shorstest time possible?

Answer. The captain and I never had a word of conversation on that subject.

Interrogatory 29th. Have you not stated the facts contained in the two preceding interrogations in conversation with any person?

Answer. No, sir.

Interrogatory 30th. Do you feel any interest in this suit?

Answer. I do not.

Interrogatory 31st. Have you not thought that you would be called upon by the insurance agent to return the value of the salt so saved by you?

Answer. I have not till to-day, when you yourself, the attorney, stated to one who is now here that I was afraid that I had got to pay for the salt.

134 Interrogatory 32d. Did I state to you, Mr. Parmalee, that you would have to pay for the salt?

Answer. You did not.

Interrogatory 33d. How much did you realize by the sale of the salt so saved by you?

Answer. I used it myself what could be used, and for that reason I could not tell. I sold only a part of one barrel.

Interrogatory 34th. Have you not stated that for money the cargo could have been saved?

Answer. You, Mr. Jackson, asked me several times whether the cargo could not have been saved. I replied that money would do most anything, to your question if scows could not have been built.

Direct examination resumed:

Interrogatory 17th. How long would it have taken, if the fishing boats were lashed together, and could have been loaded with sixteen barrels of salt at a time, to have made a trip from the propeller to the shore, and return; loding and unloading?

Answer. Really, I cannot tell; certainly half an hour.

Interrogatory 18th. I think you have stated that the boats could not have been loaded while the propeller was rolling so.

Answer. I have not stated that, for the boat has to watch its chance to get near enough to load in such case.

Interrogatory 19th. How much salt did the sixty-seven barrels amount to that you saved?

135 Answer. I could not say. I presume it was all pretty much alike, and what I had of it is not all used now. Some of the barrels were half full, and some two-thirds full, and some were less than half full; all damaged more or less.

Interrogatory 20th. How long would the salt remain above water after it was thrown overboard in this pile spoken of?

Answer. From five to ten or fifteen minutes; as the vessel rolled, the salt would go under water.

Cross-examination resumed:

Interrogatory 35th. Were any of the barrels saved wholly full?

Answer. There were three supposed to be full; other parties had them; I don't know.

Interrogatory 36th. Could not the trip have been made more rapidly than you state by running ropes from the fishing boats to the shore, and having them properly manned?

Answer. I think not by running from the fishing boats to the shore, but running them from the propeller to the shore might have made a difference.

Interrogatory 37th. What side of the vessel was the cargo thrown overboard?

Answer. On the larboard side.

Interrogatory 38th. Would not that then have caused the propeller to have been driven further ashore, if the vessel was rolling as badly as you say she then was?

136 Answer. No, sir; I would have made no difference on account of the sand working around the vessel.

D. D. PARMALEE.

Taken, subscribed, and sworn to before me at my office in Waukegan, this 17th day of June, A. D. 1868.

[NOTARIAL SEAL.] FRANCIS E. CLARKE,
Notary Public.

And Melancthon H. Wright, a witness of lawful age, being produced, sworn, and examined on the part of the respondent, to the questions propounded to him deposes and says as follows, to wit:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Answer. My name is Melancthon H. Wright; my age is forty-one years; my occupation is clerk in the employ of the pier company; and I reside at Waukegan, Illinois, and have resided here 23 years.

Interrogatory 2nd. Did you see the propeller Portsmouth ashore here in the fall of 1866?

Answer. I did.

Interrogatory 3rd. When did you first see her ashore?

Answer. About seven o'clock in the morning.

Interrogatory 4th. What kind of wind and sea was there?

Answer. What we call a northeast wind with a heavy sea rolling.

Interrogatory 5. Do you know whether the propeller, in trying

137 to get off, broke all her lines; and did they get one of you, and broke that?

Answer. Yes, sir.

Interrogatory 6th. Were there any means or materials by which the

cargo or any portion of it could have been saved under the circumstances?

Answer. No, sir.

Interrogatory 7th. Do you know whether the propeller was or was not rolling badly during the day.

Answer. She was rolling badly.

Interrogatory 8th. Could the master of the propeller have done anything else than what he did do to get the vessel off and save part of the cargo?

Answer. No, sir.

Interrogatory 9th. Could the tug which came from Chicago lighter he propeller?

Answer. No.

Cross-examination by Mr. Jackson:

Interrogatory 1st. Did you at one time think that the cargo could have been saved by a scaffold or a raft?

Answer. I did once.

Interrogatory 2d. What induced you to change your opinion?

Answer. Too big a sea rolling.

Interrogatory 3rd. When did you change your opinion?

Answer. It might have been a year ago.

Interrogatory 4th. Did you not state to me in conversation last fall that you thought a scaffold or raft could have been constructed so
138 as to have saved the cargo?

Answer. You asked me as he asked Parmalee, if I thought there could not have been a raft or a scaffold built, and I told him providing there had not been so much sea.

M. H. WRIGHT.

Taken, subscribed, and sworn to before me at my office at Waukegan, this 17th day of June, A. D. 1868.

[NOTARIAL SEAL.] FRANCIS E. CLARKE,
Notary Public.

Endorsed: Filed June 22, 1868.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the seventh day of July, A. D. 1868, in the regular July term of said court, A. D. 1868, in the record of the proceedings in said court in said entitled cause is the following entry, to wit:

139 *Order setting cause for hearing.*

354. THE SALT COMPANY OF ONONDAGA
vs.
2,175. THE PROPELLER PORTSMOUTH, &c. } Libel.

Now came the parties by their proctors, and thereupon this cause is set down for hearing upon the libel, answer, proofs, and exhibits on file; and after hearing the arguments of counsel the court takes the same under advisement.

And afterwards, to wit, on the twenty-seventh day of July, in the regular July term of said court, A. D. 1868, in the record of the proceedings in said court in said entitled cause is the following entry, to wit:

Hearing & decree.

354. THE SALT COMPANY OF ONONDAGA }
vs. } Libel.
2,175. THE PROPELLER PORTSMOUTH, &c. }

The court having considered and being now fully advised upon the matters heretofore submitted herein, finds that the respondent was in fault as alleged in the libel herein, and that the libellants have sustained damages in the sum of twenty-four hundred and sixty dollars and ninety-four cents. It is thereupon considered by the court that the libellants have and recover from the said respondent the said sum of twenty-
140 four hundred and sixty dollars and ninety-four cents damages aforesaid, together with their costs and charges to be taxed.

Whereupon, on motion of Messrs. Waite and Clarke, proctors for the libellants, it is ordered and adjudged by the court that a summary judgment be and the same is accordingly hereby entered against Daniel Williams, as principal, and William G. Lewis, Charles H. Ham, and Joseph B. Lewis, as sureties in the sum of five thousand five hundred and eighty-three dollars, the amount of the stipulation given the marshal on the arrest of the respondent; and that the libellants have execution therefor to be discharged and satisfied upon the marshal making thereof the amount of the decree for damages herein, interest thereon, and costs. And thereupon the respondent, by his proctors, prays an appeal to the circuit court.

And afterwards, to wit, on the sixth day of Agust, A. D. 1868, the respondent, by his proctors, comes and files his bond or stipulation herein, which is in the words and figures following, to wit:

141 *Appeal bond.*

District court of the United States for the northern district of Illinois.—
In admiralty.

SALT COMPANY OF ONONDAGA }
vs. }
THE PROPELLER PORTSMOUTH. }

Whereas an appeal has been taken from the decree of this court, made on the 27th day of July, A. D. 1868, in a certain cause wherein the Salt Company of Onondaga, is libellant, against the propeller Portsmouth, her engines, boiler, and machinery, and Frank Williams, claimant, by the said claimant:

Now, therefore, the stipulators undersigned hereby stipulate in the sum of five thousand dollars to pay all damages and costs which shall be awarded against the said appellant by the final decree rendered by the appellate court.

FRANK WILLIAMS. [SEAL.]
WM. G. LEWIS. [SEAL.]
JOSEPH B. LEWIS. [SEAL.]

142 Endorsed: I do not object to the bail or the form of the bond, but I deny the right to appeal at this late day.

H. F. WAITE.

This bond is approved and is to be filed nunc pro tunc as of the 5th day of Agust, 1868.

THOMAS DRUMMOND.

Filed Agust 6th, 1868.

WM. H. BRADLEY, *Clk.*

143 *Certificate of clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify that the above and foregoing is a true and correct transcript of the record of the district court of the United States for said district, in the cause wherein the Salt Company of Onondaga is the libellant, and the propeller Portsmouth is the respondent, made up pursuant to the fifty-second rule in admiralty of the Supreme Court of the United States, as the same remains in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Chicago, in said district, this fourteenth day of Agust, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-third year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[5-cts. U. S. int. rev. stamp, canceled.]

144 On this day, to wit, the 6th day of October, in the adjourned October term A. D. 1868, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

Cause set for hearing.

THE SALT COMPANY OF ONANDAGA *vs.* THE PROPELLER PORTSMOUTH. } Appeal.

Now come the parties by their proctors, and thereupon this cause is set down for hearing upon the record from the district court filed herein; and after hearing the same and arguments of counsel, the court not being sufficiently advised in the premises, takes time to consider.

On this day, to wit, the 22d day of October, in the adjourned October term, A. D. 1868, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

145 *Decree.*

THE SALT COMPANY OF ONANDAGA *vs.* THE PROPELLER PORTSMOUTH. } Appeal.

The court having considered and being now fully advised upon the matters heretofore submitted herein, affirms the decree of the district court in this cause; and it appearing from the record that a decree was rendered in the district court, on the twenty-seventh day of July, eighteen hundred and sixty-eight, in favor of the libellant, for the sum of twenty-four hundred and sixty-dollars and ninety-four cents damages, together with costs:

It is thereupon ordered, adjudged, and decreed by the court, that the respondent pay to the libelant the said sum of twenty-four hundred and sixty dollars and ninety-four cents, the amount of the decree aforesaid,

together with the sum of thirty-four dollars and eighty-six cents, being the interest on said decree from the said twenty-seventh day of July last, amounting in all to the sum of twenty-four hundred and
146 ninety-five dollars and eighty cents, together with the costs herein to be taxed, and also the costs in the district court; and it is further ordered that a summary judgment be, and the same is hereby, accordingly entered against Frank Williams, William G. Lewis, and Joseph B. Lewis, as stipulators in the sum of five thousand dollars, being the amount of the stipulation given upon the appeal of the respondent to this court; and it is further ordered by the court that unless said decree for damages and costs be paid within ten days, execution issue against the respondent and its stipulators therefor to the marshall of this district for the sum of five thousand dollars, the amount of the penalty in the stipulation entered into, to be discharged and satisfied upon the marshall making thereon the decree aforesaid for damages, interest thereon, and costs. And thereupon the respondent prays an appeal to the Supreme Court.

147 On the 31st day October, A. D. 1868, came Frank Williams, appellant herein, by his proctors, Rae & Mitchell, and filed his bond or stipulation, which is in the words and figures following:

Appeal bond.

Circuit court of the United States of America, northern district of Illinois.

THE PROPELLER PORTSMOUTH, FRANK WILLIAMS claimant and appellant,
vs.
THE SALT COMPANY OF ONANDAGA, libellant and appellee.

Know all men by these presents, that we, Charles H. Ham, William G. Lewis, and Joseph B. Lewis, of the city of Chicago, in the State of Illinois, are held and firmly bound unto the above-named Salt Company of Onandaga, in the sum of five thousand dollars, to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors,
148 and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 31st day of October, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WM. G. LEWIS. [SEAL.]
CHARLES H. HAM. [SEAL.]
JOS. B. LEWIS. [SEAL.]

Sealed and delivered and taken and acknowledged this 31st day of October, 1868, before me.

WM. L. MITCHELL, *Notary Public.*

149 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Charles H. Ham, William G. Lewis, and James B. Lewis, being duly sworn, depose and say, and each for himself saith, that he is woth the sum of five thousand dollars over and above all his debts and liabilities.

Sworn and subscribed this 31st day of October, 1868, before me.

I approve the above bond, and the sufficiency of the sureties thereto. October 31st, 1868.

Approved:

THOMAS DRUMMOND.

Endorsed: Filed Oct. 31st, 1868.

WM. H. BRADLEY, *Clk.*

150 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in said entitled cause, wherein the said Salt Company of Onondaga is libellant, and the said propeller Portsmouth is respondent, as the same appears of record remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court at my office, in the city of Chicago, in said district, this fifth day of December, A. D. eighteen hundred and sixty-eight, and of the independence of the United States the ninety-third year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[5-cent int. rev. stamp, cancelled.]

151 Supreme Court of the United States.

THE SALT COMPANY OF ONONDAGA, appellee,
vs.
THE PROPELLER PORTSMOUTH, appellant. } In admiralty.

The answer of the above-named appellee to the petition of appeal of the appellant:

The said appellee not confessing any of the matters to be true as in the said petition of appeal are set forth, for answer thereto, says: That said appellee believes it to be true that such decree as is complained of by the appellant was made by the circuit court of the United States in the northern district of Illinois for the seventh circuit, as in the said petition of appeal is set forth; but as to the date, substance, and contents thereof, this appellee humbly craves leave to refer thereto when the same shall be produced. And this appellee is advised and believes that the said decree is agreeable to justice and equity, and he therefore prays that the same may be affirmed, and that the said petition of appeal may be dismissed by this honorable court with costs, to be adjudged to this appellee.

THE SALT COMPANY OF ONONDAGA.

GEO. F. COMSTOCK,
Attorney, Proctor, and Advocate.

(Endorsed:) Supreme Court of the United States. The Salt Company of Onondaga, appellee, vs. The Propeller Portsmouth, appellant. No. 374. Answer to petition of appeal. Geo. F. Comstock, att'y & proctor. Syracuse, N. Y. Filed 14 December, 1868.

THE UNITED STATES OF AMERICA:

In the Supreme Court of the United States of the December term, A. D. 1869.

THE SALT COMPANY OF ONONDAGA, defendant in error, *ats.* THE PROPELLER PORTSMOUTH, plaintiff in error. } Joinder in error.

Appeal from the circuit court of the northern district of Illinois.—In admiralty.

And the said Salt Company of Onondaga, defendant in error, by Waite & Clarke, its attorneys, comes and says, that there is no error, either in the records and proceedings aforesaid, or in giving judgment aforesaid, in manner and form as above assigned; and therefore he prays that the said judgment may be affirmed, and that his costs may be adjudged, to him, etc.

By HORACE F. WAITE,
Atty's for Defendant in Error.

Hon. GEO. F. COMSTOCK, *Counsel.*

Endorsed: No. 374. Supreme Court of the United States. Joinder in error. The Propeller Portsmouth vs. The Salt Company of Onondaga. No. 374. Filed 5th Jan'y, '69. Waite & Clarke, att'ys for appellee.

SUPREME COURT

OF THE

UNITED STATES.

THE SALT COMPANY OF ONONDAGA,
Appellee,
vs.
THE PROPELLER PORTSMOUTH,
Appellant.
} In Admiralty.

STATEMENT OF THE CASE.

Appeal from a decree of the Circuit Court of the United States for the Northern District of Illinois, affirming a decree of the District Court in favor of the libellant, The Salt Company of Onondaga, for the sum of $2,460.94 and costs, to be taxed.

On the 4th of October, 1866, the Salt Company shipped at Buffalo, on board the Propeller, two thousand barrels of salt for the port of Chicago, under a Bill of Lading in the usual form, but containing an exception of the "Dangers of Lake Navigation." (See Bill of Lading, p. 19.)

The Propeller reached the Fox Islands in Lake Michigan, on the 9th of October, and in the evening of that day left the

Islands bound direct for Chicago. There was a north-east wind with considerable sea and a fog. The vessel kept on her course during that night and the next day until six o'clock, P. M. The fog which had prevailed then lifted somewhat, and a church steeple and a house were seen on the west shore of the Lake, eight or ten miles distant. The Captain supposed the place to be Racine in Wisconsin. In fact it was probably Milwaukie. He kept on up the Lake and toward Chicago.

Just before morning of the next day the Captain, in consultation with his officers, thought they had reached Chicago. They saw some lights, heard a whistle and the sound of the cars. On this assumption they steered for port. It turned out to be the port of Waukegan, some 30 to 40 miles short of Chicago. The time was dark and foggy. Being under full headway the vessel could not be arrested, after the error was discovered, until she struck and got aground. This was just before day light. She was got off the next morning by means of a tug sent from Chicago. The tug arrived about four in the afternoon. After its arrival about 1,000 barrels of the salt were thrown overboard in order to lighten the vessel so as to enable the tug to move her. Some of the other cargo had been jettisoned, immediately after getting aground, in the first effort to get off the vessel. But nothing further was done until the tug arrived.

No effort was made during the day, or after the tug arrived to save any portion of the cargo. At first there was a strong wind and a heavy sea. But in the afternoon, and on the arrival of the tug, the wind had become moderately calm and the roll of the sea was subsiding.

The facts of the case were carefully examined at the original hearing before *Judge Drummond*, and they are stated with more of detail in his opinion which is subjoined (see also the opinion of *Mr. Justice Davis*,) on the appeal to the Circuit Court. It seems unnecessary to repeat the facts further in this statement.

POINTS.

I.

"The dangers of Lake Navigation," excepted in the Bill of Lading, are those which belong to the category of inevitable accidents. To that extent the exception qualifies the common law liability of the carrier. It confers no exemption when a reasonable exertion of human skill can avoid the peril and prevent the loss.

Angel on Carriers, 167 *et. seq.*
The Niagara vs. Cordes, 21 How. 7.

II.

The situation was briefly this: "The Captain of the vessel judging that he had sailed far enough from the Fox Islands (260 miles distant) to reach Chicago, seeing some lights on shore and hearing a whistle and the sound of cars, jumped to the conclusion that he had reached that port. His Propeller was perfectly safe in the open lake where she was; he steered at a violent rate of speed in a dark, foggy and windy night, for the harbor. In fact he was 30 to 40 miles short of his destination. The mistake being discovered, his speed was too great to arrest the vessel in due time. She went aground at the pier on Waukegan and he threw his cargo overboard in order to get away as quickly as possible.

This was not a danger of the Lake Navigation. There was no danger until it was produced by his own careless mistake and inconsiderate conduct.

The original mistake of taking Milwaukee for Racine, (25 miles apart,) had no cause whatever, except a loose reckoning as to the distance sailed in a day and a night. For this he and

his employers only were responsible. This original error mainly produced a similar one off Waukegan. He mistook that port for Chicago. If the lights and signs in a dark night were such as to distinguish one of these ports from the other the Captain was bound to know the difference. If they were not, then he was bound to wait until he could find out where he was. In either case he deviated from his course without justification or excuse.

III.

Nothing was done to save the cargo from the consequences of the mistake. The Propeller lay where she was grounded, and within a few feet of the Waukegan Pier, for 24 hours, without a single effort to save any portion of the cargo. As the winds and waves were subsiding the Captain began to throw overboard the salt of the libellant. There is decisive evidence that the whole or the greater portion of the jettisoned goods might have been saved. The contrary evidence of the Captain and some of his subordinates is entitled to no consideration because no effort was made.

IV.

The decree of the Circuit Court should therefore be affirmed.

GEO. F. COMSTOCK,
For Appellant.

OPINION BY DRUMMOND, J.

The facts of this case are briefly these: The libellant, on the fourth day of October, 1866, shipped, at Buffalo, on board of the propeller, then bound for Chicago, two thousand barrels of salt, under the bill of lading in the usual form, and which declared that the dangers of lake navigation only were expected,

The propeller, shortly after, left Buffalo, and, on the 9th day of October, arrived at the Fox Island, in Lake Michigan: discharged some portion of the cargo there: took in additional cargo: and, on that evening, at abot seven o'clock, left the Islands, bound direct for Chicago: there being, at the time, a north-east wind, with considerable sea. The propeller kept her course that night and all the next day, the fog still continuing until about six o'clock in the evening, when, the fog lifting a little, a church steeple was discovered on the west shore of the lake, and what seemed to be a house. The captain supposed that this was Racine, in Wisconsin, and continued on his course up the lake upon that supposition.

Between two or three o'clock in the morning of the 11th, a light was discovered, and the sound of a whistle, which was supposed to be that of a tug, was heard, and the movement of cars upon the shore. It was concluded that this was Chicago. The propeller, had passed by, and to the south of, the supposed port, and turned round to the north with a view of entering the harbor. The fog still continued. They could not see their way before them. All that they saw was the light, and that they heard was the sound of the whistle and the movement of the cars. Upon this evidence they acted, and attempted to enter the port upon the presumption that it was Chicago. As they entered, the mate, who was forward—as they came at very near the pier—discovered that it was not the pier the Chicago harbor, and gave immediate notice to the captain, who was on the pilot house. The propeller was backed, but, in a short time, struck upon the bottom: and it proved to be, not the port of Chicago, but that of Waukegan. The clerk was immediately sent ashore, and dispatched to Chicago for a tug, which arrived at Waukegan in the afternoon of the 11th: the captain having, in the meantime, jettisoned a portion of the cargo and, among the rest, a quantity of salt belonging to the libellant — the propeller not having been removed from her position prior to the arrival of the tug.

They were unable to get the propeller off until the following morning, when she proceeded on her voyage to Chicago, less that portion of the cargo which had been thrown overboard.

The rule upon the subject is this: That, if the loss happen by a peril of the lake, and it could have been avoided by the exercise of any reasonable skill or diligence at the time, the the carrier shall not be excused, but shall be held liable. (Angell on Carriers, 167, *et seq.*) The subject is also very fully discussed by the Supreme Court of the United States, in the case of the propeller "Niagara" v. Cordes, reported in 21 Howard 7, in which that court says, the losses arising from the dangers of navigation, within the exception ordinary obtained in bills of lading, such as was contained in this case, are not those that are in any degree produced from the intervention of man: they are such as happen in spite of human exertion, and which can not be prevented by human skill and prudence.

The question is, whether under the circumstances of this case, the captain of the propeller acted with all the skill and prudence necessary. While admitting the case is not entirely free from difficulty, I do not think that he did. It will be recollected that the only means the captain had to determine his position on the 10th, when he caught a glimpse of land, were the speed of the propeller and the land. At that time, the observation which was made was confessedly indefinite and indistinct. The captain supposed it was Racine, because he thought the propeller had made that much progress during the day and the preceding night: not because there was anything in the aspect of the church spire or house that he saw to give character to the locality. It may be doubted whether there was enough in the case to warrant the conclusion that the propeller had sailed that distance: as it is clear, from subsequent circumstances, she had not.

But, without insisting on great strictness as to the actual progress the propeller had made in the meantime, from the

Fox Islands up to six o'clock in the evening of the 10th, still, it is clear that there was not enough in the observation which had been made, together with the doubtful conclusion derived from the progress of the vessel, to justify them, absolutely, in the conviction that there was before them any particular place. The most that could be said was, that it was a matter of doubt; and, in point of fact, the mistake that was made in the progress of the vessel must have been from thirty to forty miles. That is to say, they supposed they were thirty or forty miles nearer Chicago, on the evening of the 10th, than they actually were.

The time that they arrived at and were about to enter the supposed harbor of Chicago, was not far from three o'clock in the morning. The fog was still thick. The evidence they had that this was the port of Chicago, was confessedly vague and indefinite. There was nothing to justify them, absolutely, in the conclusion that it was Chicago. It is clear that those on board the propeller, although they thought they were entering the port of Chicago, still, were not *certain* that they were so doing. The question is, whether they were justified, under the circumstances, in taking the chances and acting upon the presumption that it was the port of Chicago. As I have already said, I think that, under the circumstances of the case, with the evidence before them as to where they were, the hour of the morning and the state of the weather, they ought to have remained until the approach of light or the lifting of the fog rendered it certain where they were. It is to be observed that there was no imperative necessity, either in the sea or in the state of the wind, for their making the harbor. There was no great risk, either to the propeller or to the cargo, in remaining off the port where they were until it could be ascertained with certainty what their situation actually was.

Again: admitting that the captain was justified, under the circumstances, in attempting to enter the harbor on the sus-

picion that it was Chicago. I think that proper precautions were not taken. If they were justified in entering the harbor at all, the utmost caution and skill should have been used. They should have felt every step of the way. They should have advanced only with sufficient speed to give adequate and proper steerage way to the propeller. The engineer says that the were entering with the usual speed. The witnesses do not all agree upon this point: but I think it is manifest that they were advancing too rapidly at the time: and, it is apparent to me, that, if they had exercised more caution, that the risk to the vessel and cargo, even if they had struck, would not have been near so great as it ultimately proved to be. So that, on both grounds, I think there was not that degree of skill and prudence exercised that there ought to have been under the cirstance of the case.

It is true that something ought to be allowed to the opinion of the responsible party, whose duty it was to decide at the time—the captain of the propeller; but, while this is true, it must not be forgotton that there is also something due to the owner of the cargo, and it is not just or right that the captain, in the exercise of the responsibility which devolved upon him, under circumstances like these, should take the chances which then, it was apparent, existed. There was a chance that it was the harbor of Chicago! There was a chance that it was not! The captain was not justified in taking that chance. I think it is the duty of the Courts to hold mariners, under circumstances like these, to the exercise of all reasonable skill and prudence. Therefore it is that I hold the propeller accountable for the loss which occurred in this case. We excuse them if the loss happened from dangers of lake navigation: but it must be clear that the loss has happened in consequence of such danger. If it appears that the exercise of proper skill and prudence might have prevented the loss, then the carrier must be held responsible.

Again: I am not satisfied with the conduct of the Captain

after the vessel was stranded. The rule laid down by the Supreme Court of the United States in the case already referred to, is that, after the vessel is stranded, the master is bound to take all possible care of the cargo. When the vessel went ashore, the Captain sent for a tug. No effort was made to get lighters. No attempt was made to save the cargo; but the cargo, or a portion of it, including the salt of the plaintiff, was thrown overboard and piled up upon the bottom, so that many of the barrels rose above the surface of the water, and were subsequently saved by parties, residents of Waukegan. There was a heedlessness, even a recklessness, on the part of the Captain, in regard to the jettison of a portion of the cargo, which I hardly think, under the circumstances, can be justified. But, inasmuch as some of the witnesses examined think that the Captain was justified in the jettison that was made, I do not place the decree upon this ground. But my own opinion is, that if proper exertion had been made, that a part, if not the whole of the cargo, might have been saved. The vessel was not more than fifty feet from the pier: lighters might have been obtained, and certainly a portion of the cargo saved. And it will be recollected that the wind was subsiding and the sea falling.

Decree for libellant for the value of the salt, belonging to the libellant, which was thrown overboard.

WAITE & CLARK,
Proctors for Libellant.

RAE & MITCHELL,
Proctors for Respondents.

The above case was taken by appeal into the Circuit Court of this District, and the decision of Judge Drummond, in the District Court, above given, was affirmed by Mr. Justice Davis, of the Supreme Court of the United States, sitting as Circuit Judge.

OPINION BY DAVIS, J.

This libel was filed to recover for a failure to deliver to the consignee, at Chicago, a quantity of salt, shipped by the libellants on board the Portsmouth, at Buffalo, on the 4th of October, 1866. The bill of lading obliged the carrier to deliver the salt, unless prevented by the dangers of lake navigation. The defence set up is, that the master of the propeller, while running at night, in the fog, mistook the harbor of Waukegan for that of Chicago—got aground—and was compelled to jettison a part of the cargo, in order to get his vessel off. It is claimed the master was justified, because, running the entire distance from the Fox Islands, in the fog, he had mistaken the speed of his boat, and, in consultation with his officers, believed he was at Chicago—when, in fact, he was thirty or forty miles off. It is to be observed, if the officers of the propeller really thought they were at the port of Chicago; yet it is clear from their own testimony, they were not certain of it, and simply took the chances, on the presumption they had arrived at Chicago. But why the necessity for entering the harbor at all, under the circumstances? The sea was not rolling so as to be dangerous to either vessel or cargo, nor was the wind unfavorable; and I cannot see that there was any risk in remaining off the port until daylight, or the lifting of the fog, would have rendered the particular locality certain. The master of the propeller testifies that, had he waited until daylight before attempting to enter the harbor, "he thinks he could have seen a little plainer;" and acknowledges that the weather was not of such a character as to prevent the taking, with safety, the vessel out into the lake, and waiting—although he thinks he could not have cast anchor near shore. If the weather had been so bad that the vessel and cargo would have been in peril by remaining in the open sea, the master would have been justified in seeking a port; but under the circumstances of this case, common prudence required him to wait until morning,

to see if he could not, having the advantage of daylight, better ascertain where he was. If the carrier is to be excused, he must be able to show that, under the circumstances in which he was placed, he exercised reasonable skill and dilligence to prevent the loss. This, the defendant fails to show; but it is also apparent the master did not use sufficient caution while entering the harbor. Owing to the density of the fog, and his inability to discern with certainty his precise locality, he should have materially slackened the speed of his boat, and felt his way very carefully. Had he performed this duty, his vessel and cargo would not have been placed in such imminent peril. But, again: if the master, after his vessel had been stranded, had thought of his cargo, as well as his vessel, when he sent to Chicago for a tug, he would have directed that a lighter be also procured.

It is very certain, to my mind, if reasonable efforts had been made to save the cargo, as well as the vessel, the court would not have been troubled with this controversy. Adopting fully the views of the District Judge, given in this case, and regretting that I have not time to discuss the questions at issue more at length, I content myself in affirming the decree of the District Court.

WAITE & CLARK, Proctors for Libellant.

RAE & MITCHELL, Proctors for Respondents.